Submission to House of Assembly Government Administration Committee B:

Inquiry into the *Electoral Disclosure and Funding Amendment Bill 2024* (No. 9 of 2024)

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EXECUTIVE SUMMARY & RECOMMENDATIONS

- The new Tasmanian *Electoral Disclosure and Funding Act 2023* is flawed and leaves Tasmania with the least transparent and robust electoral funding and political donations laws in the nation in key areas.
- The fact the *Electoral Disclosure and Funding Act 2023* has yet to commence provides a logical and timely window now to amend the Act.
- The Assembly Committee Inquiry into the *Electoral Disclosure and Funding Amendment Bill 2024 (No. 9 of 2024)* provides a timely opportunity by which the Tasmanian Parliament can upgrade the new Act prior to its eventual commencement, so that the long-awaited donations disclosure scheme meets community expectations and holds its own amongst our interstate counterparts, if not be a national leader in transparency and accountability at the time the legislation comes into force fully or partially.
- The *Electoral Disclosure and Funding Amendment Bill 2024* is to be commended for highlighting the need for political donations reform as a priority of the new 51st Parliament.
- Although the *Electoral Disclosure and Funding Amendment Bill 2024* does seek to introduce necessary and pertinent reforms, it does not address all the flaws of the Principal Act.
- The *Electoral Disclosure and Funding Amendment Bill 2024* fails to address the Act's inequitable omission of the Legislative Council from the electoral funding and administrative funding provided for the Assembly.
- There is precedent for the staggered commencement of legislation. Parts 11 and 12 of the Act should be withheld from commencement until amendments to the Act have been passed to provide equitable funding for the Legislative Council as it is provided for the Assembly. This will avoid unnecessary delay of the implementation of other reforms such as the lowering of the political donations disclosure threshold.
- **Recommendation 1:** That the Committee supports the Amendment Bill 2024's intent to reduce the Principal Act's reportable political disclosure threshold from $5000 to an aggregated $1000 from one donor threshold.

  In this context, the Amendment Bill 2024's proposal to amend Section 47 of the Principal Act to reduce disclosure of certain gifts received from $5000 to $1000 is also supported.
- **Recommendation 2:** That the Amendment Bill 2024's intent to provide for more timely political donations disclosure is supported in principle, but the Bill should be amended to seek to amend the Principal Act by introducing a black-out period of eight days prior election day during which political donations cannot be made or received.

- **Recommendation 3:** That the Amendment Bill 2024's intent to introduce both Election Expenditure Caps and Donations caps be supported in principle, but that further consideration is given to the models applied to each form of cap including:
    - Appropriate and equitable inclusion of third-party campaigners, and associated entities;
    - Equitable arrangements recognising the need to provide as level a playing field as possible for non-incumbent independent candidates, and /or new minor parties;
    - Indexation or otherwise of either Expenditure and/or Donations cap thresholds; and
    - Aggregated timeframes for the Council compared with the Assembly.
- **Recommendation 4:** Should the Committee consider the Amendment Bill 2024's proposed prohibition on any donations not from natural persons too prohibitive, then at the very least the Amendment Bill 2024 should be amended to explicitly prohibit donations from particular corporate interests – tobacco, property development, and gambling businesses. These provisions could be modelled on the NSW Act.
- **Recommendation 5:** That the Committee considers the further amendments required, either to the Amendment Bill 2024 or as a cognate Bill, providing for comparable and equitable public funding for the Legislative Council for the purposes of electoral funding and administrative funding, as provided for the House of Assembly under the Principal Act.
- **Recommendation 6:** truth in political advertising laws should be included and prioritised as a key component of the proposed reforms of Tasmania's election disclosure and funding laws.

INTRODUCTION

It is widely recognised Tasmania does not have a strong reputation or a proud track-record when it comes to tackling the influence of political donations on our political sphere, particularly elections.

The state's historic avoidance of meaningful legislative regulation has, and continues to, contribute to that poor reputation.

For decades Tasmania languished behind our state and territory counterparts, as the only subnational jurisdiction without its own political donations disclosure and regulation laws. Instead, the only legal requirements covering political donations disclosures was that stipulated under the federal laws administered by the Australian Electoral Commission.

In fact, that still remains the case, as the *Electoral Disclosure and Funding Act 2023*, the Principal Act, is yet to commence.

Therefore, while the Principal Act remains in abeyance, the only political donations disclosure threshold that applies to Tasmania remains that established under the federal laws, which for the period of 1 July 2004 – 30 June 2025 is any amount over $16, 900.

Historical Context of the Amendment Bill 2024

The 2018 state election was dominated by the public policy issue of removing poker machines from pubs and clubs. Although participants and commentators were sure pro-pokies lobby funding was influential during the election campaign, the community had to wait until the release of the AEC political donations disclosure data on1 February 2019 – some eleven months after the March 2018 election – to see where and how much of that pro-pokies lobby money flowed.

The returned Liberal government at the time declared more than $400,000 from pro-gambling groups in the lead-up to the 2018 state election. Analysis undertaken by the Grattan Institute found this amount was "*equal to nearly 90% of the party's declared donations, and a ten-fold increase on the amount gambling groups gave in the previous election*." 1

In contrast, it did not appear pro-gambling donors gave anything to Labor, which ran on a substantial pokies reform election platform, and Labor's Tasmanian branch received a total of only $160,000 in donations for the year.

However, to this day we do not know for sure the exact amounts of political donations that may have come from pro-gaming entities to either the Labor or Liberal parties.

That is because the AEC disclosure threshold at the time was $13, 800 or more. Not only could the high threshold hide political donations made and received, there was – and remains – no requirements to declare a series of smaller donations made by one donor that together exceed the threshold.

For example, analysis of the February 2019 donations disclosures did reveal via the Tasmanian Hotels' Association declaration that, just two days before the 2018 polling day, the THA donated $57,000 in seven separate donations to the Liberal Party.2

Because each donation was under the threshold, these donations are not identified in the Liberal Party declaration of the time. The only way for the public to find out about these funds is to guess who might have donated and go hunting in the donor records to see whether the donor has volunteered to disclose any amount beneath the threshold, despite the law not requiring they do so.

1 Wood D, Chivers C, Griffiths K,. 'Tasmania's gambling election shows Australia needs tougher rules on money in politics, *The Conversation*, 1 Feb 2019.

2 Ibid

As the Grattan Institute warned at the time, "*heavy reliance on a single donor industry creates the risk of undue influence over policy. Tasmanians would be right to question the effect on this inflow of funds from the gambling lobby on their democracy*."

Tasmanians did question the effect of the pro-gambling lobby donations on that election outcome – they questioned it loudly and insistently, demanding legislative reform.

In light of the community outrage over not only the belated confirmation that monies from the pro-pokies lobby far exceeded other donors, but also the fact the extent of this financial largess was kept hidden until well after election day, the then-Premier, the Hon. Will Hodgman MP promised to introduce a Tasmanian political donations disclosure regime.

However, the Exposure Draft Bill for a Tasmanian Electoral Disclosures and Funding system was not released until August 2021 – following yet another state election, on the 1st of May 2021, without a political donations disclosure scheme in place.

Following a public consultation period, the government's *Electoral Disclosure and Funding Bill 2022 (25 of 2022)* was finally tabled in May 2022, four years after the contentious 2018 election and the Premier of the day's promise. Assembly debate on the Bill didn't commence until October in 2002, and finally was passed and sent to the Legislative Council in November that year.

However, the government did not prioritise bringing it on for debate in the Upper House until nine months later in late August of 2023.

The *Electoral Disclosure and Funding Bill 2022 (25 of 2022)* was widely decried as inadequate and not delivering the rigour, disclosure or equity demanded by the community.

These deficiencies were recognised by many Upper House Members who worked hard on a series of amendments which sought to bring the long-awaited Bill in line with community expectation.

However, with rumours of yet another early state election, the Labor Opposition decided to withdraw support for any amendment which was not supported by the government, purportedly on the grounds it would be preferable to have some form of state-based political disclosures law in place than none should there be an imminent state election.

However, as had been clear at the time, despite receiving the Royal Assent on the 11th of December 2023, the passed – and inadequate in the eyes of many - new laws were not implemented in time for the March 2024 state election, due to the Tasmanian Electoral Commission requiring time to put in place the necessary disclosure and education infrastructure.

That is the context of the current Electoral Disclosure and Funding Amendment Bill 2024 (No. 9 of 2024) and this House of Assembly Committee inquiry.

The current Amendment Bill 2024 is the latest expression of broad community disquiet and frustration over the continued stagnation of meaningful and rigorous political donations disclosure reforms for this state.

The *Electoral Disclosure and Funding Act 2023* is deficient, inadequate and inequitable.

Even prior formal commencement, the Principal Act will in all likelihood be woefully out-of-date in light of further reforms occurring at the national and inter-state levels.

Hence this Assembly Committee Inquiry into the *Electoral Disclosure and Funding Amendment Bill 2024 (No. 9 of 2024)* provides a timely opportunity by which the Tasmanian Parliament can upgrade the new Act prior to its eventual commencement, so that the long-awaited donations disclosure scheme meets community expectations and holds its own amongst our interstate counterparts, if not be a national leader in transparency and accountability at the time the legislation comes into force.

Criteria by which to evaluate the *Amendment Bill 2024*

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*." 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.*"4

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

Established 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 rigourous limitations on undue influence of donors and vested corporate interests; and
- the regulation of third parties involvement in our electoral systems. 5

It is beyond the scope of this submission to go into all matters in detail. For example, the regulation of third-party campaigners and associated entities is a crucial consideration when establishing a robust and equitable electoral funding and disclosure regulatory regime. However, other than acknowledging that necessary component of the debate, I am aware that others will be focusing their contributions on those aspects and hence this submission will instead prioritise other important matters of consideration.

This submission will focus on evaluating the extent to which the Amendment Bill 2024 addresses the following key provisions:

- Donations disclosure threshold
- Timeliness of election donations disclosure
- Election expenditure and donations caps
- Bans on anonymous and specific donations
- Equitable public funding of election campaigns

3 Ng, Yee-Fui (Dr), *Regulating Money in Democracy: Australia's Political Finance Laws Across the Federation: A Report prepared for the Electoral Regulation Research Network*, January 2021; pg 3
4 Ibid.
5 Ibid.

Political Donations Disclosure Threshold

The Amendment Bill seeks to reduce the Principal Act's current disclosure threshold of $5000 to $1000. Additionally, the Amendment Bill seeks to ensure that the proposed $1000 disclosure threshold is an aggregate which will capture all smaller donations from one donor which may total $1000. It is worth noting the Principal Act does impose its $5000 disclosure threshold as an aggregate.

The Principal Act's current aggregated $5000 threshold is one of the highest donations disclosure thresholds across subnational jurisdictions (particularly should SA successfully legislate to ban all political donations as recently announced by its State Government).

It is absurd to still be debating the introduction of an aggregated disclosure threshold of $1000.

In response to the former Liberal government's Electoral Act Review Interim Report public consultation process undertaken in 2021, 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. 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, which inexplicably appeared in the government's Bill, and remains in the current Principal Act.

Additional to the community's expressed preference for $1000 as the disclosure threshold level the Tasmanian Integrity Commission made the following statement in the submission it made on the draft Bill in 2021:

> 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.

If the Principal Act remains with its current aggregated disclosure threshold from $5000 we will see Tasmania badly out of step with our national counterparts.

Federally, there has also been a push to reduce the current AEC disclosure threshold of $16, 900, (for the 2024-25 reporting period), to $1000 also.

A 2018 Senate Select Committee into the Political Influence of Donations Report recommended that:

> "The committee recommends that the Australian Government amend the Commonwealth Electoral Act 1918 to introduce a fixed disclosure threshold of $1,000, to be calculated cumulatively over a whole party group." 6

This recommendation was echoed by the subsequent Federal Joint Standing Committee on Electoral Matters Interim Report of June 2023 which stated:

6 The Senate, Select Committee into the Political Influence of Donations, *Political Influence of Donations*, Commonwealth of Australia. 2018; pg v.

> "The Committee recommends that the Australian Government lower the donation disclosure threshold to $1,000." [7]

Recently, Prime Minister Anthony Albanese had committed to reforming the federal political donations disclosures and electoral funding laws, including accepting the recommendation to lower the disclosure threshold to an aggregated $1000. It has been reported the Federal Government intends to introduce legislative reforms during the Federal Parliament's August sitting session of this year. [8]

Victoria is currently considering its Electoral Review Expert Panel's 2023Report on Victoria's laws on political finance and electronic assisted voting which has recommended many reforms, while South Australia has released its *Electoral (Accountability an Integrity) Amendment Bill 2024* by which that state is seeking to ban all political donations for electoral purposes.

These reform moves targeting the disclosure thresholds will see Tasmania firmly entrenched as an outlier. A $5000 disclosure threshold will clearly mean we have the least transparent or accountable political disclosure regime in the nation.

Recommendation 1: That the Committee supports the Amendment Bill 2024's intent to reduce the Principal Act's reportable political disclosure threshold from $5000 to an aggregated $1000 from one donor threshold.

In this context, the Amendment Bill 2024's proposal to amend Section 47 of the Principal Act to reduce disclosure of certain gifts received from $5000 to $1000 is also supported.

Real-Time Disclosure of Political Donations

The Principal Act does not provide for real-time disclosures of political donations made or received.

Outside the designated election period donations do not need to be disclosed to the Tasmanian Electoral Commission (TEC) until 21 days after the end of a six-month period in which the donation was made or received (s. 53 (2) of the Principal Act). The TEC then has a further 21 days by which to ensure those details are published on the website – meaning it could be closer to eight months following donation being made or received before the public is aware of it.

During an election period, donations must be disclosed to the TC within seven days of receipt, after which the TEC has a further seven days to then publish that disclosure on its website. This means during an election period it may take up to a fortnight before the public is made aware of political donations made and received. Clearly this means any donations made within the last two weeks prior election day may not be publicly disclosed until after polling day.

And as the previously mentioned AEC 2019 release of political donations data revealed, just two days before the 2018 polling day, the THA donated $57,000 in multiple instalments to the Liberal Party. Under the current Principal Act voters going to the ballot box on polling day still would not know of this donation in the dying days of the election period until the votes were being counted.

7 Parliamentary Joint Standing Committee on Electoral Matters, *Conduct of the 2022 federal election and other matters Interim Report*, Commonwealth of Australia 2023; pg xiii.
8 Grattan, M. Grattan on Friday: Don Farrell has an electoral reform blueprint, but if could be a rough road to implementation, *The Conversation*, 11 July 2024.

The Amendment Bill 2024 does seek to address this and move the situation closer to timely disclosure. It seeks to amend the Principal Act by requiring non-election period donations to be declared to the TEC within seven days of receipt, and those donations made within an election period to be disclosed within 24 hours of receipt. Further, the Amendment Bill then seeks to amend S. 53 of the Principal Act to reduce the second step in the disclosure process at the TEC's end of proceedings.

However, even the proposed Amendment Bill 2024 changes would see a donation received having up to 24 hours, or one day, to be declared to the TEC, which then also has a further 24 hours, or a second day, by which to publish that disclosure.

Referencing the 2018 THA example again, that $57, 000 made across the last two days of the election campaign may still not have been required to be disclosed under the revised time periods proposed by the Amendment Bill 2024.

Instead, another proposal would be to amend the Principal Act to introduce a donation black out period prior polling day, during which no new donations could be made or received. For example, should the eight day period prior polling day, and not inclusive of polling day, be declared a donation black-out period, that would allow for any donations made up until that point to be declared to the TEC, and in turn provide the TEC sufficient time under the current seven day period by which to publish all donations made during that election period before polling day.

Recommendation 2: That the Amendment Bill 2024's intent to provide for more timely political donations disclosure is supported in principle, but the Bill should be amended to seek to amend the Principal Act by introducing a black-out period of eight days prior election day during which political donations cannot be made or received.

Election Expenditure and Donations Caps

The Principal Act fails to provide either election expenditure caps or donations caps.

The omission of either election-related finance cap is problematic particularly alongside the introduction of public funding for elections. Being able to still raise unlimited funds via donations undermines a key purpose of public funding which is to guard against opportunity for influence by reducing the reliance on private donations to fund election campaigns.

Similarly, campaign expenditure caps work to reduce demand for – and reliance upon – campaign donations.

Election expenditure caps

Tasmania is not new to the concept of election expenditure caps, which have been in place for Legislative Council elections for decades. The recent May 2024 periodic Legislative Council elections had a permitted maximum candidate expenditure limit of $19, 500.

Candidates must file electoral expenditure returns with the TEC within 60 days of the election result being declared. These returns are then available for public inspection for the next 12 months.

The introduction of public funding without limits on election expenditure or limits on donations overall, as is currently the case under the Principal Act, is extremely problematic. To meet the objective of limiting the influence of donors, as noted in the *Regulating Money in Democracy* report, 2021:

> … 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.

Further, as stated by the Tasmanian Integrity Commission in its 2018 submission to the Electoral Act review:

> 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.

A 2021 Centre of Public Integrity report also identifies 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.

And further:

> 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 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'.

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.

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.

The 2018 Senate Select Committee also made the following recommendation:

> *The committee recommends that the Australian Government amend the Commonwealth Electoral Act 1918 to introduce caps on campaign expenditure by political parties, candidates and associated entities. Expenditure caps should be indexed to inflation and subject to periodic review.* [9]

The subsequent 2023 Joint House Committee on Electoral Matters Report recommended the following:

> *The Committee recommends that the Australian Government introduce expenditure (also known as spending) caps for federal elections.* [10]

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.

In this context, the Amendment Bill 2024's acknowledgment for the need for election expenditure caps for candidates, parties and third-party campaigners is welcome and should be supported.

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9 The Senate, Select Committee into the Political Influence of Donations, *Political Influence of Donations*, Commonwealth of Australia. 2018; pg vi.

10 Parliamentary Joint Standing Committee on Electoral Matters, *Conduct of the 2022 federal election and other matters Interim Report*, Commonwealth of Australia 2023; pg xiii

However, the equitable balance between independent candidates and party endorsed candidates, as well as non-incumbent independent and/or new minor parties contesting elections needs to be considered in the finalisation of any election expenditure cap.

Third party campaigners' expenditure caps also need to be carefully considered and included.

Donations Caps

Similarly, the absence of donations caps from the Principal Act, which also then provides for public funding for Assembly elections, is extremely problematic.

The whole point of public funding is to remove the actual and/or perceived influence of 'dirty money' influencing outcomes, as well as providing a degree of egalitarian access for all those considering contesting as a candidate – it is meant to provide as much as possible a transparently funded level playing field whether you are a single parent from a rural area or a corporate high flyer looking to give back to the community…

But that transparent level-playing field paved with public funding becomes warped if private donations are still allowed without a ceiling limit imposed, which in turn can still facilitate the problem of some candidates and parties achieving electoral success due to their capacity to outspend political opponents, rather than the merit of their electoral policies.

So instead of elections being a contest of ideas, they are reduced to a spending spree.

Put bluntly it is a nonsense to have both public funding and to then still allow unlimited private donations whether they are fully disclosed or not.

The previously mentioned the 2023 Federal Joint Standing Committee on Electoral Matters report also recommends donations caps, and cites advice from the eminently respected Professor Anne Twomey who notes the High Court had previously acknowledged the validity of donations - and expenditure – caps.

Professor Twomey's advice to that Joint Committee states:

> *"Limits on expenditure and donations can support, rather than burden, the implied freedom of political communication by ensuring that the voices of the well-resourced do not drown out a variety of other voices in the political sphere."*

In its submission to the federal committee, the Human Rights Law Centre also highlights the following risk:

> *"The absence of donations caps at a the federal level means that well-resourced individuals and entities have an opportunity to buy undue influence and access. The public is aware of this risk, and as a consequence the absence of caps also has a deleterious impact upon fraying public trust: public trust in democracy."*

The introduction of donation caps as well as more rigorous transparency around those allowable donations received is essential to the goal of this Bill before us, in restoring Tasmanians' trust in our governance systems – which most here would recognise is a steep hill to climb.

Donations caps seek to ensure an inclusive level playing field, rather than an exclusive one dominated by the loudest, wealthy voices, and by doing so contribute to restoring confidence and faith in our electoral processes and system of governance.

The High Court has already upheld the constitutionality of the NSW laws which impose political donations caps. Specifically, the report highlighted the following from the HRLC submission:

> *"The High Court has recognised the utility of donations limitations, holding in its 2015 McCloy v New South Wales (McCloy) decision that 'the risk to equal participation posed by the uncontrolled use of wealth may warrant legislative action to ensure, or even enhance, the practical enjoyment of popular sovereignty'. This judgement – which upheld the*

constitutionality of NSW laws imposing caps on political donations, banning donations by property developers and prohibiting indirect campaign contributions – specifically recognised that the donations caps in question did not impede the system of representative government provided for by our Constitution: but preserved and enhanced it."

NSW currently imposes election donation caps, as does Queensland and Victoria.

In NSW donations to political parties, elected members, candidates, groups of candidates, associated entities, and third party campaigners are capped for a financial year, with the cap adjusted annually for inflation.

For 2022-23 financial year these NSW donation cap amounts were:

- $7000 – registered party or group of candidates
- $3, 300 – unregistered party or party registered for less than 12 months, elected member or candidate
- $3, 300 – associated entity or third party campaigner.

In **Queensland**, donations are capped at $6000 for an independent candidate or party endorsed candidate, or capped at $4000 for a registered political party, including either a single or aggregate donation made by the same donor for the period between 1 July 2022 and 25 November 2024. The cap amount is adjusted after each general election in line with CPU. Third parties are not subject to donation caps, but are subject to expenditure caps.

Victoria has an indexed donations cap. For the financial year of 2023-24 that cap currently is $4,670.

Interestingly, **South Australia** made reforms in 2013 which included introducing a voluntary public funding scheme designed to partially reimburse political parties, candidates and groups for political expenditure incurred during campaign period – but those who choose to opt-in to that public funding/reimbursement option are then subjected to political expenditure caps.

Clearly, other jurisdictions see and have acted upon the nexus between public funding and caps such as donation and expenditure caps.

The majority of submissions made to the 2018 *Electoral Act Review 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.

The 2018 Senate Select Committee Report stated:

"The committee recommends that the Australian Government amend the Commonwealth Electoral Act 1918 to introduce a cap on donations to political parties, candidates and associated entities to a maximum value of $3,000 per parliamentary term. Donations made by the same donor to the same recipient should be aggregated for the purpose of the cap." [11]

The subsequent 2023 Joint Standing Committee on Electoral Matters Report included:

The Committee recommends that donation caps and expenditure caps apply to third parties and associated entities.[12]

11 The Senate, Select Committee into the Political Influence of Donations, *Political Influence of Donations*, Commonwealth of Australia. 2018; pg vi.

12 Parliamentary Joint Standing Committee on Electoral Matters, *Conduct of the 2022 federal election and other matters Interim Report*, Commonwealth of Australia 2023; pg xiii

The Amendment Bill 2024 does seek to introduce donations caps which should be supported in principle, noting it proposes a cap of $3000 as a general cap, and as an aggregated amount from one donor over a four year period.

However, it is unclear whether the Amendment Bill 2024 intends for membership subscriptions and affiliation fees to be considered donations for inclusion in the cap, or whether the proposed cap is to apply to candidates, members, political parties, and associated entities.

Similarly, the Amendment Bill 2024 is silent on a mechanism by which any political donation that is mistakenly accepted in breach of the cap is returned to the donor, or is confiscated in some other manner.

When moving an amendment in the Legislative Council during the 2023 debate on the then- Electoral Funding and Disclosure Bill, to introduce a donations cap, my amendment proposed a cap of $6,000 on aggregated donations from same donor to same recipient across each parliamentary term.

'Parliamentary term' was defined in the amendment for both the Assembly and for Legislative Council members/candidates, reflecting the fact that Upper House terms are fixed for six years, unlike the Assembly terms.

The 2023 Legislative Council amendments seeking to include electoral expenditure caps and donations caps are included as Appendix A.

Recommendation 3: That the Amendment Bill 2024's intent to introduce both Election Expenditure Caps and Donations caps be supported in principle, but that further consideration is given to the models applied to each form of cap including:

- Appropriate and equitable inclusion of third-party campaigners, and associated entities;
- Equitable arrangements recognising the need to provide as level a playing field as possible for non-incumbent independent candidates, and /or new minor parties;
- Indexation or otherwise of either Expenditure and/or Donations cap thresholds; and
- Aggregated timeframes for the Council compared with the Assembly.

Bans on anonymous and specific donations

Currently the Principal Act only prohibits donations from foreign donors.

This means, unlike other jurisdictions, Tasmania's new Act does not contain any prohibition on donations from particular industries that may have a vested interest in influencing political decision-making and election outcomes, despite the fact Tasmania has shocking and recent examples of particular industries making donations to shift election outcomes to deliver favourable policy outcomes.

This is out of step with both the Tasmanian community's expectations and also our interstate counterparts.

Other interstate jurisdictions include in their political donations disclosure regimes additional fairness and transparency protections against actual or perceived corruption which are not included in this Bill – provisions such as prohibiting the receipt or use of donations from particular corporate sectors.

- The **ACT** and **Queensland** both prohibit donations from property developers.
- **NSW** currently bans donations from property developers, tobacco, gaming and liquor industry sectors.

- Additionally, in June this year **Victoria** launched a public review into its electoral donations and funding laws, with one identified area upon which feedback is sought being whether there are additional sources of funds that should be banned or restricted under the scheme – for example: bans on donations from property developers, gambling, tobacco, and liquor industries that apply in some jurisdictions.

- In 2023 the **South Australian** Premier, Peter Malinauskas , made a submission to the Federal Joint Standing Committee on Electoral Matters referred to earlier, in which he stated:

> *"Before the March 2022 state election in South Australia, I made a commitment that should I form Government, my Government would move to ban all political donations for state campaigns, including from individuals, businesses, unions and other organisations. It is my view, and that of my Government, that such a reform will improve public confidence in South Australia's public institutions by removing any threat or perception of undue political influence."*

The purpose of Mr Malinauskas' submission was to urge the federal parliament to ban political donations for national elections, as well as to consider any implications should a state go it's own way and implement such a broad ban.

As preciously noted, the SA government has recently released draft legislation to ban all political donations for South Australian elections. Should that legislation not succeed, it is possible that State will move instead towards implementing a ban on specified corporate sectors such as property developers, tobacco, and gaming corporate interests.

The Amendment Bill 2024 seeks to bring Tasmania back into line with our interstate counterparts by amending the Principal Act to prohibit certain political donations. Specifically, by only allowing natural persons who are Australian citizens or permanent residents eligible to make political donations.

Recommendation 4: Should the Committee consider the Amendment Bill 2024's proposed prohibition on any donations not from natural persons too prohibitive, then at the very least the Amendment Bill 2024 should be amended to explicitly prohibit donations from particular corporate interests – tobacco, property development, and gambling businesses, as drafted for the Legislative Council debate in 2023.

Equitable public funding of election campaigns

As stated earlier in this submission, the Electoral Regulation Research Network defined the key political finance regulation principles as including consideration of "*promoting fairness in politics"* and transparency and equity regarding *"political funding streams and funding rates, and enforcement."*

Tin relation to the provision of equitable public funding of election campaigns, both the Liberal government's *Electoral Disclosures and Funding Act 2023* and the Amendment Bill 2024 fail on this account.

Both fail to provide the Legislative Council public funding at all, let alone in a comparable manner to that by which the Bill seeks to provide such public funding to the House of Assembly.

The omission of election related- public funding and administrative funding for the Legislative Council was, and remains, problematic, undemocratic and inequitable.

There are clear inconsistencies in the way the two Chambers have been considered and included in both the Principal Act and the Amendment Bill 2024. While it is not surprising the introduction of any electoral funding and expenditure regime would need to be tailor-made to some degree to reflect the established differences

of the two Chambers, such as current Council election expenditure limits, reporting requirements, and constraints on party funding or third-party campaigning, the exclusion of the Council for electoral funding and administrative funding as provided for the Assembly is inexplicable and inequitable.

The current Principal Act provides public funding for House of Assembly election campaigns, including for registered parties and independent Assembly candidates. Assembly registered parties can also be eligible for advance payments of public funding. Additionally new administration fund is established under the Principal Act, which will provide public funding to assist with Assembly administrative expenditure for eligible parties and independent Assembly members.

Despite the Council still expected to comply with disclosure, reporting and other administrative measures established under the new Principal Act, the Upper House is excluded from any equivalent public funding.

Legislative Councillors will not be provided an exemption from complying with the new Act when it finally commences, therefore the legislated support provisions to ensure one House can comply with these new reporting, administrative and auditing obligations should be extended to cover both.

The previously mentioned Federal Parliamentary Joint Standing Committee on Electoral Matters *Interim Report on the Conduct of the 2022 federal election and other matters* states:

> *"The Committee recommends the Australian Government introduces a new system of administrative funding to recognise the increased compliance burden associated with a reformed system."*

The Joint Standing Committee does not say such a new administrative funding system should only apply to the House of Representatives. Instead, their proposal also applies to the Senate.

The Joint Standing Committee cites a range of expert witnesses on this matter which emphasises the importance of appropriate public administrative funding to assist election participants comply with regulatory requirements, including Professor Joo-Cheong Tham who stated:

> *"That's clear in terms of the New South Wales reforms, where there was increases in public funding. One of the central reasons for that was to ensure there were enough staffing resources in terms of compliance… if there's going to be increased regulation, there's of course going to be increased compliance activity. We should be conscious that this regulation doesn't amount to an informal entry barrier to smaller parties or newcomers." (pg 59* 2023 Joint Standing Committee Interim Report*)*

And that is a key worrying consideration regarding the lack of equitable provision of administrative and election-related public funding for the Legislative Council – that in its absence, yet with the new proposed compliance requirements, it could serve as a very real disincentive for new independent candidates and smaller parties from contesting Legislative Council elections.

That that would be a perversion of the stated intent of these long-awaited reforms to provide for a more fair, democratic and equitable election funding and disclosure system for Tasmania and Tasmanians – if instead we saw a reduction in diversity in new independent candidates and in smaller parties contesting for representation in this Chamber along with current established parties and incumbents.

It is also worth noting that nationally, currently only the Northern Territory and Tasmania do not provide some form of election-related public funding. All the bicameral interstate jurisdiction's respective public funding for election campaigns systems include **both** Chambers, including the Federal Parliament.

It is extremely disappointing that the opportunity presented by the Amendment Bill 2024 was not taken to seek to address that inequity between the two Tasmanian Chambers.

My proposed model for the provision of public funding for Legislative Council as raised during the 2023 debate on the government Bill include:

- A threshold of achieving 4% of the first preference vote to be eligible for public funding.
- $6 per vote for each first preference vote received, up to a maximum equivalent to either 80% of the electoral expenditure cap for that Legislative Council election or the amount of actual expenditure, whichever is the lesser.

The suite of proposed amendments prepared by this submitter for the Upper House debate on the government's Bill in 2023 are provided in Appendix B to this submission.

Recommendation 5: That the Committee considers the further amendments required, either to the Amendment Bill 2024 or as a cognate Bill, providing for comparable and equitable public funding for the Legislative Council for the purposes of electoral funding and administrative funding, as provided for the House of Assembly under the Principal Act.

Table 1: Comparison with other Australian jurisdictions providing Electoral Public Funding and Administrative Funding

	Public Funding for both Houses?	Election Funding Rate	Threshold Vote to Qualify	If Administrative Funding Provided – Available to both Houses?
Commonwealth Commonwealth Electoral Act 1918	✓	$3.125 per eligible vote (1 Jan 2023- 30 June 2023)	Payable to any candidate or group who receives at least four per cent of the total (formal) first preference votes in an election.	No Administrative Funding provided.
South Australia Electoral Act 1985	✓	Funding is calculated on a per vote basis. There are two different types of funding entitlements: 1. The 'standard entitlement' is $3.00 (indexed) for each eligible vote. The standard entitlement applies to parties that have an MP at the dissolution of Parliament. Or SA has a 'tapered entitlement' is as follows: ▪ $3.50 (indexed) for each eligible vote received that falls within the first 10% of the total primary vote; and ▪ $3.00 (indexed) for each eligible vote received in excess of 10% of the total primary vote. (most suited for independent candidates and groups without MP)	▫ A candidate for an HA election must be elected or receive a total number of eligible votes of at least 4% of the total primary vote for that election. ▫ A candidate for an LC election must be elected or receive a total number of eligible votes of at least 2% of the total primary vote for that election. ▫ A group contesting an LC election must have a member elected or receive a total number of eligible votes of at least 2% of the total primary vote for that election.	**Yes** – but to parties only. See Division 5—Special assistance funding for political parties Registered political parties must meet the following eligibility criteria to receive special assistance funding: ▫ At least 1 member of the party must have been a member of the Parliament of South Australia for all or part of the half-yearly period; and ▫ The party must have been a registered political party on polling day for the last preceding general election and continued to be registered for all of the half-yearly period; and ▫ The agent of the party submitted a valid claim to the Electoral Commissioner setting out the administrative expenditure incurred by the party during that half-yearly period. Special assistance funding claims under Division 5 are limited to the following maximum amounts: ▫ For a party with 5 or fewer members of Parliament - $35,000 (indexed) ▫ For a party with 6 or more members of Parliament - $60,000 (indexed)
Victoria Electoral Act 2002	✓	Assembly candidates: $6.49 Legislative Council candidates: $3.24	Public funding is available for independent candidates and eligible political parties - if: ▫ receive at least 4% of first preference votes; or ▫ are elected.	**Yes.** Victoria operates two assistance funds: ▫ Administrative funding is paid quarterly to independent MPs and parties based on their representation in Parliament and cannot be used for electoral expenditure or paid into a state campaign account. ▫ Policy development funding is available to registered political parties who are not eligible for either public funding or administrative funding, and is payable annually to the amount of $1.05 per vote or $26,350, whichever is greater.

Table 1: Comparison with other Australian jurisdictions providing Electoral Public Funding and Administrative Funding

	Public Funding for both Houses?	Election Funding Rate	Threshold Vote to Qualify	If Administrative Funding Provided – Available to both Houses?
New South Wales Electoral Funding Act 2018	✓	Threshold is at least four per cent of total number of first preference votes received ▫ $4.66 per first preference vote received by the endorsed candidates of the party in the Legislative Assembly; ▫ $4.66 per first preference vote received by the candidate (non-party) in the Legislative Assembly ▫ $3.50 per first preference vote received by the endorsed candidates of the party in the Legislative Council; ▫ $5.25 per first preference vote received by the candidate (non-party) in the Legislative Council *(Note – figures for 4-year period to 2023 state election)*		**Yes.** NSW operates two assistance funds: The purpose of the Administration Fund is to reimburse eligible political parties and independent members of parliament for administrative and operating expenditure incurred in a quarterly period. The purpose of the New Parties Fund is to reimburse eligible political parties (which are not eligible for the Administrative Fund) for policy development expenditure incurred in a financial year.
Western Australia Electoral Act 1907	✓	$2.136827, as of 1 July 2022, CPI adjusted annually.	Payable to any candidate or group who receives at least four per cent of the total (formal) first preference votes in an election.	No Administrative Funding provided.
Tasmania ***As per Electoral Disclosure and Funding Act 2023***	✗ Public Funding of election campaigns to be available to only Assembly Independents, candidates and parties.			✗ Administrative Fund available to only Assembly Independents, MPs and parties.
Queensland *Electoral Act 1992*	*n/a*	As per 2022-23 financial year: $3.00 for candidates per formal first preference vote, and $6.00 for registered political parties per formal first preference vote for each eligible candidate.	A candidate is eligible to receive election funding if they receive at least 4% of the total number of formal first preference votes in their electoral district. A registered political party is eligible to receive election funding if a candidate who it endorsed for the election receives at least 4% of the total	No Administrative Funding provided, instead Policy Development funding is available each financial year to parties who were registered at the last state general election and have at least one elected member endorsed by the party for the financial year.

Table 1: Comparison with other Australian jurisdictions providing Electoral Public Funding and Administrative Funding

	Public Funding for both Houses?	Election Funding Rate	Threshold Vote to Qualify	If Administrative Funding Provided – Available to both Houses?
			number of formal first preference votes in their electoral district	
ACT **Part 14,** ***the Electoral Act 1992***	*n/a*	The July 2022 to 31 December 2022 period was 916.080 cents per eligible vote. (*adjusted by all groups CPI twice per year*)	Election funding is provided to registered political parties and non-party candidates that receive at least 4% of the total number of formal first preference votes in an electorate.	Provides Administrative funding**.** Administrative expenditure funding is paid quarterly to parties with Assembly representation and to non-party MLAs (if any); administrative funding is currently (2021) paid at the rate of $23,286.56 per calendar year for each MLA; the amount paid is indexed each year; administrative expenditure funding must not be used for electoral expenditure in relation to an ACT, federal, state or local government election
Northern Territory ***Electoral Act 2004***	Yet to implement Committee Inquiry (2018?) recommendations to implement election public funding.			No Administrative Funding provided.

Truth-in-Political Advertising

The Amendment Bill 2024 proposes to amend the Principal Act to provide for 'Misleading Advertising.'

This amendment recognises the growing awareness of and concern regarding the negative impact of disinformation and mal-information upon the conduct of election campaigns and election outcomes.

Attempts to legislate to regulate categories of potential false statements have occurred in Britain since 1895.13 Australia's first national electoral law, the *Commonwealth Electoral Act 1911* required the inclusion of the author's name and address on published political or electoral comment during election campaigns. According to ANU Law Lecturer Kieran Pender, when the High Court was asked in 1912 about the Commonwealth's legal authority to pass such regulatory provisions, the answer was, "*Parliament can forbid and guard against fraudulent misrepresentation. It would shock the conscience to deny it*." [14]

It took until 1985 for the first state law, SA's *Electoral Act 1985* to include Truth in Political Advertising provisions. In the six SA state election since 1997, apparently 313 complaints relating to misleading electoral advertising were lodged with the SA Electoral Commission, which issued 25 retraction orders.

A review was conducted of the SA truth in political advertising provisions in 2017 which found that the provisions were, "*relatively 'benign', but had constrained 'politicians from making claims that are demonstrably false'."* [15]

More recently the ACT amended its *Electoral Act 1992* to provide for Truth in Political Advertising which took effect in 2021.

There was a consensus amongst the stakeholders who raised the need for Truth-in-Political Advertising during the consultation stages of the government's political donations bill leading up to the 2023 debate, that the best proven model upon which to base similar laws for Tasmania is the South Australian model.

Once again, this is reiterated by the Federal 2023 Joint Standing Committee on Electoral Matters Report which contained the following two recommendations:

> *Recommendation 11: The Committee recommends that the Australian Government develop legislation, or seek to amend the Commonwealth Electoral Act 1918, to provide for the introduction of measures to govern truth in political advertising, giving consideration to provisions in the Electoral Act 1985 (SA).*
>
> *Recommendation 12: The Committee recommends that the Australian Government consider the establishment of a division within the Australian Electoral Commission, based on the principles currently in place in South Australia, to administer truth in political advertising legislation, with regard to ensuring proper resourcing and the need to preserve the Commission's independence as the electoral administrator.*[16]

In support of its recommendations in favour of truth in political advertising provisions, the 2023 Joint Standing Committee on Electoral Matters Report cited, amongst others, the following contributions which this submission considers relevant for the purposes of the current Committee Inquiry:

- "…the Australian National University Law Reform and Social Justice Research Hub argued that:

13 Pender, K., 'Regulating Truth and Lies in Political Advertising: Implied Freedom Considerations', *Sydney Law Review 1*., 44 (1), 2022; pg 5.
14 Ibid.
15 Pender, K., 2022; pg 8.
16 Parliamentary Joint Standing Committee on Electoral Matters, *Conduct of the 2022 federal election and other matters Interim Report*, Commonwealth of Australia 2023; pg iv.

False and misleading political advertisements undermine the legitimacy of our democracy and erode public confidence in the electoral process... Exposure to misinformation, particularly misinformation espoused from political office holders undermines voter's confidence in the electoral system and their elected representatives."

- "Professor George Williams argued that the absence of truth in political advertising laws is an unhealthy gap in Australia's democracy:

  Truth is fundamental to democracy. When citizens cannot tell fact from fiction, and leaders spread falsehoods for political advantage, society as a whole is damaged. The United States readily demonstrates this. Donald Trump's baseless claims about electoral fraud are sowing division and distrust throughout that nation and undermining good governance. This is a wake-up call for Australia. We need to act to limit the damage that can be caused by political lies.

  The legal system has a role to play in holding people and organisations to account when they spread harmful lies to their advantage. For example, it is illegal for businesses to mislead or deceive consumers. They cannot make wrongful claims about their product, nor spread falsehoods to undermine a competitor. Another example is the law of defamation that enables people to sue for damages when their reputation has been sullied.

  Where the Australian Parliament has fallen short is in regulating misinformation by our politicians. Parliament has regulated all sorts of falsehoods, but has failed to look to its own. The result is that politicians can lie with impunity in the hope of misleading voters to secure electoral advantage. There are many examples of this, including scare campaigns involving Medicare and death taxes."

- "… Professor Luke Beck highlighted that truth in political advertising laws have a widespread impact, influencing the political culture as a whole:

  Perhaps the most important goal of truth in political advertising laws is to improve political practice and promote a better political culture. The South Australian Electoral Commissioner, who enforces SA's truth in political advertising laws, has commented that such laws have a meaningful impact in reducing misleading electoral advertising and does so because of the political culture the existence of the law has helped to create."

- "The Canberra Alliance for Participatory Democracy made a similar point in supporting truth in political advertising laws, arguing that '*The very existence of such legislation will act to curb excesses of mis- and dis- information by making clear the expectation for campaigns to focus on policy and the quality of candidates'."*

- "Professor Beck and Professor Williams each held the view that the focus should be on the regulation of purported statements of facts rather than opinions or ideas in contested areas. The Australia Institute advocated for the protection of opinion and predictions, and limiting laws to advertising."

The above selected excerpts demonstrate the range of considered expertise regarding not only the constitutionality of truth in political advertising provisions but also the positive impact they can have on shaping a political culture for the better.

Proposed provisions of the Amendment Bill 2024:

This submission strongly supports the need for Tasmanian truth in political advertising provisions.

The question is how well does the Amendment Bill 2024's proposal meet that need.

The clauses contained in the Amendment Bill 2024 appear to be based primarily upon the South Australian legislation.

As it is beyond the scope of this submission to discuss in detail constitutional considerations, particularly potential implied freedom of communication considerations of different models, it is acknowledged that it makes sense to base proposed new Tasmanian laws upon a model such as South Australia's given it has been tried, tested, and found to deliver.

However, it is worth noting that the South Australian model, and the later ACT model which is also based on the South Australian version, do not provide a specific definition for electoral advertising. Instead, these Acts refer to the mode of advertising as a defining factor, which while 'published' dos cover a range of modes, the inclusion of 'radio or television' appears rather dated in a digital age.

It may be useful for the Committee to also consider the truth in political advertising amendments moved by the Hon. Rob Valentine MLC during the Legislative Council debate on the 15th of November 2023. While very similar in effect to those included in the Amendment Bill 2024, a specific definition of "electoral advertisement" is included. (See Appendix C).

Another consideration is whether reforms of the state's nascent political donations disclosure legislation is the appropriate vehicle by which to introduce truth in political advertising laws?

For instance, all the other provisions of the Amendment Bill 2024 deal with matters specifically pertaining to transparency over monies raised and spent by those contesting state parliamentary elections, and who qualifies to participate in that political finance sphere.

The distinction between regulation of political and election finance, and truth in advertising is highlighted by the fact the Amendment Bill 2024's proposed new section 197A is to be inserted into the *Electoral Act 2004*, as distinct from the *Electoral Disclosures and Funding Act 2023.*

Similarly, during the Legislative Council debate in 2023 of the then-government's cognate pair of electoral reform Bills, the truth in political advertising amendment drafted first for Labor and then for the former Independent Member for Hobart, the Hon Rob Valentine MLC, was moved during debate on the *Electoral Matters (Miscellaneous Amendments) Bill 2022*, not the *Electoral Disclosure and Funding Bill 2022*.

However, despite whether it is via an amendment to the *Electoral Disclosure and Funding Act 2023* or the *Electoral Act 2004*, this submission does consider it appropriate to include truth in political advertising laws within a broader suite of political electoral finance regulation reforms.

The provision of public funding for elections - noting such funding is currently limited to Assembly elections - is the direct link integrating truth in political advertising provisions with electoral finance regulations.

Now that there is the very real possibility of future Assembly elections being funded by public funding, it would be utterly unacceptable and reprehensible for taxpayers' money to be used for disinformation, mal-information, and the deliberate circulation of untruths during election campaigns.

The acceptance of publicly sourced election campaign funding by candidates and parties contesting parliamentary elections, must also mean signing up to the responsibility, transparency and accountability required by truth in political advertising laws. Just as it is recognised that rigorous political donations disclosure regimes which provide equitable public funding do so to reduce the pernicious impact of donations upon election campaigns and election outcomes, truth in political advertising laws also seek to reduce the degree to which political finance can be used to sway election outcomes unfairly, or deceitfully.

> **Recommendation 6:** Truth in political advertising laws should be included and prioritised as a key component of the proposed reforms of Tasmania's election disclosure and funding laws.

CONCLUSION

It is widely recognised that the *Electoral Disclosure and Funding Act 2023* failed to deliver fully the community's expectation of a nation-leading comprehensive and rigorous political and electoral finance regulatory regime.

The Greens are to be commended for seeking to rectify some of the main glaring problems with the Principal Act at the earliest opportunity in the life of this new 51st Parliament.

However, when measured against the key political finance regulations principles referenced at the outset of this submission, the *Electoral Disclosure and Funding Amendment Bill 2024* will improve the Principal Act in some areas but fails to address other significant issues. Specifically:

- *Donations disclosure threshold* - the Amendment Bill 2024 does address this adequately and should be supported.
- *Timeliness of election donations disclosure* - the Amendment Bill 2024 improves on the Principal Act in this regard, however it still will not ensure that all donations received will be publicly disclosed by polling day.
- *Election expenditure and donations caps* - the Amendment Bill 2024 seeks to introduce both, which should be supported in principle even should the models be reviewed and refined. For example, different cap threshold and models were proposed during the 2023 Legislative Council debate.
- *Bans on anonymous and specific donations* - the Amendment Bill 2024 seeks to eliminate donations from particular problematic corporate sectors by restricting donors to natural persons only.
- *Equitable public funding of election campaigns* - the Amendment Bill 2024 fails to address the Principal Act's omission of the Legislative Council from the new public funding for election and related administration purposes. This is an inexplicable and fundamentally discriminatory inequity between the two Chambers. As discussed above in this submission, all other interstate bicameral jurisdiction which provide for public funding for election purposes do so for both Chambers.

I recognise that there is some degree of urgency to move on strengthening the current flawed *Electoral Disclosure and Funding Act 2023,* particularly in this window before it commences. Ideally, all the necessary strengthening reforms would be passed by the Parliament to provide a comprehensive and rigorous regulatory regime when it is officially 'switched on'.

Yet, I also recognise the temptation to move on some of the more straightforward proposed amendments, such as reducing the donations disclosure threshold from $5000 to $1000. Particularly should other identified necessary amendments require further finessing, or even need to be presented in a separate cognate Miscellaneous Amendments Bill to the current Amendment Bill 2024.

However, the harsh reality is that should it be rationalised to prioritise the more 'straight-forward' amendments for immediate action, while leaving others such as developing appropriate electoral expenditure and donation caps, a truth in political advertising framework and providing equitable public funding for the Legislative Council for later consideration – will actually ensure they will be delayed indefinitely.

Instead, the Committee should use its sway to ensure all necessary reforms identified are prioritised for swift and timely implementation.

Should it be determined that the Amendment Bill 2024 is not the appropriate vehicle by which to address all the outstanding necessary reforms, I urge the Committee to make a formal recommendation that Parts 11 and 12 of the *Electoral Disclosure and Funding Act 2023* do not commence along with the rest of the Act, until at such time that amendments providing equivalent funding and resourcing to the Legislative Council have been passed.

By doing so, this will still allow for other important transparency provisions, such as a reduced donations disclosure threshold, the introduction of expenditure and donation caps, and truth in political advertising, can be implemented as soon as possible without being held up.

To conclude, I also urge the Committee to consider the package of amendments drafted for the Legislative Council 2023 debate, which are included in the appendices here. Ultimately, all the above discussed reforms are needed before Tasmania's new electoral funding and disclosure laws can hold their own amongst our interstate counterparts.

This Committee can wield considerable influence in whether Tasmanians finally receive the rigorous and comprehensive political donations disclosures, and equitable and transparent electoral finance laws they have been waiting for over decades.

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APPENDIX A

Expenditure Caps for Assembly

(Moved by the Hon. Tania Rattray MLC, to the *Electoral Disclosure and Funding Bill 2023,* November 2023)

NEW DIVISION HEADING

To follow clause 68.

Division A – Limits on Assembly electoral expenditure

NEW CLAUSE A

To follow new Division A heading in Part 6.

A. Interpretation of Division A

(1) In this Division –

"expenditure cap" – see section B;

"expenditure period" means –

(a) in relation to an Assembly general election – the period beginning on whichever is the earlier of the following days:

(i) the day that is 4 months before the last day by which, in accordance with the Constitution Act 1934, such an election must be held;

(ii) the day on which the dissolution of the Assembly, by virtue of which the Assembly general election is required to be held, occurs –

and ending on the day on which the Assembly general election is held; and

(b) in relation to an Assembly by-election – the period beginning on the day on which the writ for the holding of the election is issued and ending on the day on which the Assembly election is held.

NEW CLAUSE B

To follow clause A.

B. Expenditure cap

For the purposes of this Division, the expenditure cap is –

(a) for the calendar year in which this Act commences – $60 000; and

(b) for each subsequent calendar year – the expenditure cap for the immediately preceding calendar year, adjusted for inflation for the subsequent calendar year as provided by Schedule 1.

NEW CLAUSE C

To follow clause B

C. Excessive electoral expenditure by registered party or endorsed candidate

(1) For the purposes of this section, all of the following persons are the members of the relevant party grouping in relation to a registered party:

(a) the registered party;

(b) each party agent in relation to the registered party;

(c) each person authorised under section 65(6) to operate the campaign account of the registered party;

(d) each Assembly Member who is endorsed by the registered party;

(e) each official agent in relation to an Assembly Member who is endorsed by the registered party;

(f) each Assembly candidate who is endorsed by the registered party;

(g) each official agent in relation to an Assembly candidate who is endorsed by the registered party.

(2) A registered party commits an offence if the total amount of –

(a) all amounts of electoral expenditure, that are incurred, during the expenditure period in relation to an Assembly general election, by members of the relevant party grouping in relation to the registered party; and

(b) all amounts reimbursed, by members of the relevant party grouping in relation to the registered party, to persons for incurring electoral expenditure during the expenditure period in relation to the Assembly general election –

exceeds the maximum permitted amount calculated under subsection (3), in relation to the registered party, for an Assembly general election.

Penalty: Fine not exceeding 200 penalty units.

(3) For the purposes of this section, the maximum permitted amount, in relation to a registered party for an Assembly general election, is the amount calculated by –

(a) determining, in relation to each Assembly division, the number of Assembly candidates (up to a maximum of the number of vacancies for election in respect of that division) who are endorsed by the registered party for election, at the Assembly general election, in relation to the Assembly division; and

(b) adding together the numbers obtained under paragraph (a) for each of the Assembly divisions; and

(c) multiplying the number obtained under paragraph (b) by the expenditure cap.

(4) In addition to any other penalty imposed in respect of an offence under subsection (2), a registered party that is found guilty of the offence, in relation to an Assembly general election, is also liable to pay to the Crown a penalty equal to twice the amount by which the total amount, calculated in accordance with that subsection, exceeds the maximum permitted amount calculated under subsection (3), in relation to the registered party, for the Assembly general election.

(5) A registered party commits an offence if the total amount of –

(a) all amounts of electoral expenditure that are incurred, during the expenditure period in relation to an Assembly by-election, by members of the relevant party grouping in relation to the registered party; and

(b) all amounts reimbursed, by members of the relevant party grouping in relation to the registered party, to persons for incurring electoral expenditure during the expenditure period in relation to the Assembly by- election –

exceeds the expenditure cap.

Penalty: Fine not exceeding 200 penalty units.

(6) In addition to any other penalty imposed in respect of an offence under subsection (5), a registered party that is found guilty of the offence is also liable to pay to the Crown a penalty equal to twice the amount by which the total amount, calculated in accordance with that subsection, exceeds the expenditure cap.

NEW CLAUSE D

To follow clause C.

D. Excessive electoral expenditure by independent Assembly candidates

(1) For the purposes of this section, all of the following persons are members of the relevant grouping in relation to an independent Assembly candidate:

(a) the independent Assembly candidate;

(b) each official agent in relation to the independent Assembly candidate;

(c) each person authorised under section 66(5) to operate the campaign account of the independent Assembly candidate.

(2) An independent Assembly candidate in relation to an Assembly election commits an offence if the total amount of –

(a) all amounts of electoral expenditure that are incurred, during the expenditure period in relation to the election, by members of the relevant grouping in relation to the independent Assembly candidate; and

(b) all amounts reimbursed, by members of the relevant grouping in relation to the independent Assembly candidate, to persons for incurring electoral expenditure during the expenditure period in relation to the election –

exceeds the expenditure cap.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

(3) In addition to any other penalty imposed in respect of an offence under subsection (2), an independent Assembly candidate that is found guilty of the offence is also liable to pay to the Crown a penalty equal to twice the amount by which the total amount, calculated in accordance with that subsection, exceeds the expenditure cap.

NEW CLAUSE E

To follow clause D

E. Excessive electoral expenditure by associated entity

(1) For the purposes of this section, all of the following persons are members of the relevant grouping in relation to an associated entity:

(a) the associated entity;

(b) each official agent in relation to the associated entity;

(c) each person authorised under section 94(2) to make payments for electoral expenditure on behalf of the associated entity.

(2) An associated entity commits an offence if the total amount of –

(a) all amounts of electoral expenditure that are incurred, during the expenditure period in relation to an Assembly election, by members of the relevant grouping in relation to the associated entity; and

(b) all amounts reimbursed, by members of the relevant grouping in relation to the associated entity, to persons for incurring electoral expenditure during the expenditure period in relation to the Assembly election –

exceeds the expenditure cap.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

(3) In addition to any other penalty imposed in respect of an offence under subsection (2), an associated entity that is found guilty of the offence is also liable to pay to the Crown a penalty equal to twice the amount by which the total amount, calculated in accordance with that subsection, exceeds the expenditure cap.

NEW CLAUSE F

To follow clause E.

F. Excessive electoral expenditure by third-party campaigners

(1) For the purposes of this section, all of the following persons are members of the relevant grouping in relation to a third-party campaigner:

(a) the third-party campaigner;

(b) each official agent in relation to the third-party campaigner;

(c) each person authorised under section 94(1) to make payments for electoral expenditure on behalf of the third-party campaigner.

(2) A third-party campaigner commits an offence if the total amount of –

(a) all amounts of electoral expenditure that are incurred during the expenditure period in relation to an Assembly election, by members of the relevant grouping in relation to the third-party campaigner; and

(b) all amounts reimbursed, by members of the relevant grouping in relation to the third-party campaigner, to persons for incurring electoral expenditure during the expenditure period in relation to the Assembly election –

exceeds the expenditure cap.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

(3) In addition to any other penalty imposed in respect of an offence under subsection (2), a third-party campaigner that is found guilty of the offence is liable to pay to the Crown a penalty equal to twice the amount by which the total amount, calculated in accordance with that subsection, exceeds the expenditure.

NEW CLAUSE G

To follow clause F.

G. Recovery of certain amounts

An amount that a person is liable to pay to the Crown under this Division may be recovered by the Commission as a debt due and payable to the State.

Donations Caps for Assembly & Council

(Moved by the Hon. Meg Webb MLC, to the *Electoral Disclosure and Funding Bill 2023,* November 2023)

NEW CLAUSE C

To follow clause 35.

C. Acceptance of political donations in excess of donation cap

(1) In this section –

"donation cap" means $6 000;

"Parliamentary period" means –

(a) in relation to a registered party, Assembly member, Assembly candidate or associated entity, means the period –

(i) commencing on the day immediately after the polling day for an Assembly election; and

(ii) ending on the polling day for the next subsequent Assembly election; and

(b) in relation to a Council member or Council candidate, means the period –

(i) commencing on the day on which the election campaign period commences for a Council election where the member, or candidate, is a candidate in respect of a Council division; and

(ii) ending on the commencement of the next subsequent election campaign period for a Council election for that Council division.

(2) It is unlawful for a political donation by a person (the ***donor***) to a registered party, Member, candidate or associated entity to be accepted if –

(a) the political donation; or

(b) the political donation when aggregated in accordance with subsection (3) –

would exceed the donation cap in the Parliamentary period that applies in relation to the registered party, Member, candidate or associated entity accepting the political donation.

(3) If a donor makes more than one gift to a registered party, Member, candidate or associated entity (the ***recipient***) within the same Parliamentary period that applies in relation to the recipient, the political donations by the donor are taken to be the sum of each donation by that donor to that recipient, in that Parliamentary period, in aggregate.

(4) A person is not guilty of an offence under this section in relation to a political donation if –

(a) at the time the person accepts the donation, the person was not aware, and could not reasonably be aware, that accepting the donation would be an offence under subsection (2); and

(b) within 48 hours of becoming aware that accepting the donation is an offence under subsection (2), the person returns the donation to the donor.

(5) For the purposes of this section, a political donation that is payable into the campaign account of a registered party, Member or candidate is taken to be a political donation to that registered party, Member or candidate.

(6) This section does not apply in relation to a gift that is made by a donor under the terms of a will.

(7) An amount referred to in the definition of ***donation cap*** in subsection (1) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

APPENDIX B

Public Electoral and Administrative Funding for the Legislative Council

(Moved by the Hon. Meg Webb MLC, to the *Electoral Disclosure and Funding Bill 2023,* November 2023)

CLAUSE

First amendment

Page 12, paragraph (d), after “participation in”.

Leave out “Assembly”.

Second amendment

Same page, same paragraph, after “Assembly administrative expenditure”.

Insert “or Council administrative expenditure”.

CLAUSE 5

First amendment

Page 18, subclause (1), after definition of "***Council***".

Insert the following definition.

"Council administrative expenditure" – see clause A;

Second amendment

Page 22, same subclause, definition of "***Election Campaigns Fund***".

Leave out that definition.

Insert instead the following definition.

"Election Campaigns Fund" means –

(a) in relation to an Assembly general election, the Assembly Campaigns Fund established under section 131(1); and

(b) in relation to a Council election, the Council Campaigns Fund established under section 131(A).

CLAUSE 6

First amendment

Page 36, subclause (3), after "person who is or was".

Leave out "an Assembly".

Insert instead "a".

Second amendment

Same page, same subclause, after "that person is or was".

Leave out "an Assembly".

Insert instead "a".

Third amendment

Page 37, after subclause (6).

Insert the following subclause:

(A) In addition, but subject to subsection (3), any expenditure (including expenditure that is to be paid or reimbursed by the State by way of payment under Part 11 from the Election Campaigns Fund) that is incurred, in relation to a Council election, by or with the authority of –

(a) a Council Member or Council candidate; or

(b) an associated entity –

is electoral expenditure.

PART 11 HEADING

Page 204, after "Funding of".

Leave out "Assembly".

DIVSION 1 HEADING

Page 204, Part 11, heading to Division 1, after "expenditure of".

Leave out "Assembly".

CLAUSE 131

First amendment

Page 204, subclause (1), after "There is to be an".

Insert "Assembly".

Second amendment

Page 204, after subclause (1).

Insert the following subclause:

(A) There is to be a Council Election Campaigns Fund to be kept by the Commission in respect of Council elections.

Third amendment

Same page, subclause (2), after "Payments from".

Leave out "the".

Insert instead "an".

CLAUSE 137

Page 210, subclause (1) after "independent Assembly candidate".

Insert "or Council candidate".

CLAUSE 138

Page 211, subclause (1), paragraph (a), subparagraph (i), after "independent Assembly candidate".

Insert "or Council candidate".

CLAUSE 140

First amendment

Page 213, subclause (2), after "independent Assembly".

Leave out "candidate".

Insert instead "candidate, Council candidate"

Second amendment

Same page, same subclause (2), paragraph (b), after subparagraph (i).

Insert the following subparagraph:

(A) the candidate is a Council candidate – to be paid into the campaign account in relation to the Council candidate; or

CLAUSE 142

Page 216, after subclause (1).

Insert the following subclause.

(A) A Council candidate is not eligible for any payment under this Part in respect of a Council election while any failure to lodge –

(a) under section 49 a donation declaration; or

(b) under section 84 any Council election campaign return; or

(c) under section 71 any Assembly election campaign return –

for a past period continues in respect of the candidate.

PART 12 HEADING

Page 218, after "Administrative Funding".

Leave out "for Assembly".

CLAUSE 146

Page 218, subclause (1), after "of registered parties".

Leave out "and independent Assembly Members".

Insert instead "and Members".

DIVISION 2 HEADING

Page 218, Part 12, heading to Division 2, after "funding of".

Leave out "Assembly".

CLAUSE 149

First amendment

Page 223, after subclause (2).

Insert the following subclauses.

(A) For the purposes of this Part, if Council administrative expenditure is incurred, in a quarter, by or on behalf of a Council Member in excess of the amount, if any, to which the member is eligible under clause F in respect of that quarter, the amount of the excess –

(a) may be carried over to a subsequent quarter in the same calendar year; and

(b) is to be taken to be Council administrative expenditure incurred in that subsequent quarter.

(B) If a Council Member receives an amount by way of quarterly payment in excess of the amount, if any, to which the member becomes eligible under clause F in respect of that quarter, the amount of the excess must be repaid to the Commission within 60 days after the member (or agent in relation to the member) receives notice in writing from the Commission of the amount of the excess payment.

Second amendment

Same page, subclause (3), after "by a registered".

Leave out "party".

Insert instead "party, Council Member".

Third amendment.

Same page, same subclause, after "not eligible under".

Leave out "section 147 or 148".

Insert instead "section 147, section 148 or clause F".

CLAUSE 150

First amendment

Page 223, subclause (1), after "registered party,".

Insert "Council Member".

Second amendment

Same page, subclause (2), paragraph (b), after "the registered".

Leave out "party".

Insert instead "party, Council Member".

Third amendment

Page 224, subclause (3), paragraph (a), subparagraph (ii), after "who is an independent Assembly Member".

Insert "or Council Member"

Fourth amendment

Same page, same subclause, same paragraph, same subparagraph, after "to be an independent Assembly Member".

Insert "or Council Member"

Fifth amendment

Same page, same subclause, paragraph (b), after "registered party or".

Leave out "Assembly".

Sixth amendment

Same page, subclause (4), after "to a registered".

Leave out "party".

Insert instead "party, Council Member".

Seventh amendment

Same page, same subclause, after "section 152 to the".

Leave out "party".

Insert instead "party, Council Member".

Eighth amendment

Page 225, subclause (5), after "a registered".

Leave out "party".

Insert instead "party, Council Member".

Ninth amendment

Same page, same subclause, after "(if any) to which the".

Leave out "party".

Insert instead "party, Council Member".

Tenth amendment

Same page, subclause (6), after "payable to the registered".

Leave out "party".

Insert instead "party, Council Member".

CLAUSE 151

First amendment

Page 225, subclause (1), after "A registered".

Leave out "party".

Insert instead "party, Council Member".

Second amendment

Page 226, subclause (2), paragraph (b), after "registered party or".

Leave out "Assembly".

Third amendment

Same page, subclause (3), after "independent Assembly Member".

Insert "or Council Member".

CLAUSE 152

First amendment

Page 227, subclause (2), after "registered party or the".

Leave out "Assembly".

Second amendment

Same page, subclause (3), after "registered party or".

Leave out "Assembly".

Third amendment

Page 228, subclause (5), after "registered party or"

Leave out "Assembly".

Fourth amendment

Same page, same subclause, after "from the party or".

Leave out "Assembly".

Fifth amendment

Same page, same subclause, after "in relation to the party or"

Leave out "Assembly".

CLAUSE 153

First amendment

Page 228, subclause (2), after "party agent, registered party or".

Leave out "Assembly".

Second amendment

Same page, same subclause, paragraph (a), after "of the party or".

Leave out "Assembly".

CLAUSE 154

First amendment

Page 229, subclause (1), after "A registered".

Leave out "party".

Insert instead "party, Council Member".

Second amendment

Same page, subclause (2), after "in relation to the party) or".

Leave out "an Assembly".

Insert instead "a".

NEW CLAUSE A

To follow clause 14.

A. **Meaning of *Council administrative expenditure***

(1) For the purposes of this Act, a reference, in relation to a Council Member, to Council administrative expenditure –

(a) is a reference to expenditure for administrative and operating expenses; and

(b) includes a reference to the following:

(i) expenditure for the administration or management of the activities of the Member;

(ii) expenditure for conferences, seminars, meetings or similar functions at which the policies of the Member are discussed or formulated;

(iii) expenditure on providing information to the public or a section of the public about the Member;

(iv) expenditure on providing information to supporters of the Member;

(v) expenditure in respect of the audit of the financial accounts of the Member;

(vi) expenditure on equipment and training to ensure compliance, with the obligations under this Act, by the Member;

(vii) expenditure on the reasonable remuneration of staff engaged in an activity, referred to in this paragraph, for the Member (being the proportion of that remuneration that relates to the time spent on those activities);

(viii) reasonable expenditure on equipment or vehicles used for the purposes of an activity, referred to in this paragraph, for the Member (being the proportion of the cost of their acquisition and operation that relates to the use of the equipment or vehicles for those activities);

(ix) expenditure on office accommodation for staff for the Member and equipment.

(2) Despite subsection (1), Council administrative expenditure does not include a reference to the following:

(a) electoral expenditure;

(b) expenditure for which a member may claim a parliamentary allowance as a Member;

(c) expenditure incurred substantially in respect of operations or activities that relate to the election of Members to a Parliament other than the Tasmanian Parliament;

(d) expenditure prescribed by the regulations as expenditure that is not Council administrative expenditure.

(3) The Commission may determine whether any expenditure is or is not Council administrative expenditure in accordance with this Act, the regulations and the guidelines.

(4) A determination by the Commission under subsection (3) is final.

(5) The Auditor-General or an auditor is, for the purposes of this Act, entitled to rely on a determination of the Commission under subsection (3).

NEW CLAUSE E

To follow clause 135.

E. **Council candidates eligible for public funding of Council election campaigns**

A candidate in relation to a Council election who was such a candidate on the polling day for the election is, subject to and in accordance with this Act, eligible for payments for the Council Election Campaigns Fund in respect of the election if –

(a) the candidate is elected to the Council; or

(b) the total number of formal first preference votes received by the candidate at that election is at least 4% of the total number of first preference votes in the division in which the candidate was duly nominated for election.

NEW CLAUSE F

To follow new clause E.

F. Amount of public funding for Council candidates

(1) The amount to be distributed from the Election Campaigns Fund to a candidate in relation to a Council election who is, under clause E, eligible for payments from the Council Election Campaigns Fund is whichever is the lesser of the following:

(a) $6 for each formal first preference vote received by the candidate in the election;

(b) 80% of the expenditure limit that applies under section 82 for the election;

(c) the total amount of actual campaign expenditure, in respect of the election, that is incurred by or on behalf of the candidate.

(2) An amount referred to in subsection (1)(a) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

NEW CLAUSE G

To follow clause 148.

G. Administrative funding for Council Member for Council administrative expenditure

(1) A Council Member is, subject to and in accordance with this Act, eligible for quarterly payments from the Administration Fund if the Commission is satisfied that, on the date on which the entitlement for a quarterly payment is determined under this part, the member remains a Council Member.

(2) The quarterly amount to be distributed from the Administration Fund to a Council Member who is eligible for payments from the Administration Fund is the amount of Council administrative expenditure incurred by on behalf of the Council Member during the quarter to which the payment relates, but is not to exceed $9 641.

(3) The amount referred to in subsection (2) is an adjustable amount that is to be adjusted for inflation as provided by Schedule 1.

APPENDIX C

Truth in Political Advertising

(Moved by the Hon. Rob Valentine MLC, *to the Electoral Matters (Miscellaneous Amendments) Bill 2022,* November 2023)

NEW CLAUSE A

To follow clause 27.

A. Section 197A inserted

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

197A. Misleading electoral advertising

(1) In this section –

"electoral advertisement" means electoral matter that is published on the payment or transfer, or the promise of payment or transfer, of consideration or other reward or compensation.

(2) A person must not authorise, or cause or permit, the publication of an electoral advertisement if the advertisement contains a statement that –

(a) is, or purports to be, a statement of fact; and

(b) is misleading, inaccurate or incorrect in respect of a material particular.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

(3) It is a defence in proceedings for an offence under subsection (2), in respect of an electoral advertisement, if the defendant establishes that the defendant –

(a) did not have the authority, or permission, to correct the material particular, in the electoral advertisement, that was misleading, inaccurate or incorrect; or

(b) did not know, and could not reasonably be expected to know, that the material particular, in the electoral advertisement, was misleading, inaccurate or incorrect.

(4) In the proceedings for an offence under subsection (2) in respect of an electoral advertisement, the relevant court for the proceedings may make, in addition to making any other order or imposing a penalty or sanction, one or more of the following orders:

(a) that the defendant is to withdraw the advertisement from further publication;

(b) that the defendant is to publish a retraction in the manner, and on the terms, specified in the order;

(c) that the defendant is to pay the costs of a person, as specified in the order, that were reasonably incurred by the person in correcting, or contesting or disproving, the misleading, inaccurate or incorrect material particular in the advertisement.

(5) If the Commissioner is satisfied that an electoral advertisement is misleading, inaccurate or incorrect in respect of a material particular, the Commissioner may require the person who authorised, or published, the electoral advertisement to do one or more of the following:

(a) to withdraw the advertisement from further publication;

(b) to publish a retraction in the manner, and on the terms, as specified by the Commissioner;

(c) to pay the costs of a person, as specified by the Commissioner, that the Commissioner is satisfied were reasonably incurred by the person in correcting, or contesting or disproving, the misleading, inaccurate or incorrect material particular in the advertisement.

(6) A person who is required to take an action by the Commissioner, under subsection (5), must comply with the requirement.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.