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Tasmania

Money and power in Tasmanian elections

Submission

The Electoral Disclosure and Funding Amendment Bill 2024 seeks to address shortcomings of existing electoral laws; however, further amendments are required to adequately account for fairness for new political entrants, allow community voices to engage in elections, and strengthen regulation of corporates and industry bodies seeking to influence elections as third parties.

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ACKNOWLEDGEMENT OF COUNTRY

The Australia Institute Tasmania acknowledges that Tasmania was taken forcibly and unethically, and that Tasmanian Aboriginal people continue to suffer the consequences of this today. The Institute offers respect to Elders past and present.

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Summary

Despite the passage of the *Electoral Disclosure and Funding Act 2023* and miscellaneous amendments to modernise the *Electoral Act 2004*, Tasmania still has one of the weakest regulations of electoral expenditure in the country. Regulation of third parties is virtually meaningless, allowing vested interest to continue to disproportionately influence election results.

The Electoral Disclosure and Funding Amendment Bill 2024 seeks to address shortcomings of the 2023 legislation, however, without amending this bill, it will not adequately address deficiencies in existing laws. Further amendments are needed to account for fairness and a level playing field for new entrants, as well as for community and charity voices to be able to fully engage in elections.

Recommendations

1. Third parties should be exempt from provisions relating to donations caps and real-time disclosure (proposed sections 28C and 43).

   If the Parliament is not willing to exempt all third parties, at the very least charities registered by the Australian Charities and Not-for-profits Commission should be exempted.
2. Amend the bill to require third-party campaigners to disclose all political donations above a threshold used to incur electoral expenditure, regardless of when they were given for that purpose.
3. Disclosure for third party campaigners should be required by reference to when the electoral expenditure is incurred, not when the donation is made, to ensure charities can comply.
4. Include a clause that requires disclosure if the money is given with the intent of, OR used for the purpose of, incurring or reimbursing electoral expenditure.
5. The definition of *gift in kind* should be amended to include the payment of membership fees or subscriptions paid to a registered party that exceed the threshold. The meaning of *political donation* should also be amended to make it clear that such “extra” amounts are political donations for the purposes of the Act and apply to third-party campaigners.
6. Either remove donation caps from the bill or introduce a democracy voucher system alongside donation caps.
7. Consider a longer reporting period. The Australia Institute has previously recommended monthly or quarterly reporting outside of an election period and weekly during an election period, even for political parties and candidates.

   Or, consider other ways real-time disclosure laws could be made less administratively burdensome, for example only requiring small donations to be

aggregated quarterly even if one-off donations above the threshold must be disclosed more frequently.

If real-time disclosure requirements for candidates and parties remain so onerous, consider less onerous requirements for third parties.

8. Amend the bill to extend the provisions of section 197 of the *Electoral Act 2004* on misleading and deceptive electoral matter to include political advertising, modelled on SA and ACT legislation, as articulated in this paper.
9. Consider providing for an election to be voided in the case of misleading advertising, modelled on South Australian legislation.

Introduction

The Australia Institute Tasmania welcomes the opportunity to make a submission to the Inquiry into the Electoral Disclosure and Funding Amendment Bill 2024 (No. 9), to be conducted by Standing Committee on Government Administration Committee B for inquiry and report thereon.[1] This submission builds on the Institute's existing extensive research on electoral law reform – locally and nationally. In Tasmania this includes a submission to the 2021 Tasmanian Electoral Act Review,[2] research papers and commentary,[3] extensive consultation with communities and civil society organisations, as well as engagement with Parliamentary debates on the legislation arising from the Review.

Most recently, the Australia Institute has recommended a range of much needed reforms to strengthen democracy in a *Democracy Agenda for the 51st Parliament of Tasmania*, including on electoral law reform.[4] The Institute also recently conducted detailed analysis of state and federal political finance laws – concluding that public funding, donation caps and spending caps can entrench incumbency benefits, amplify the financial power of a limited group of people and further insulate political parties from members and voters.[5]

In May 2024, the Tasmanian Greens introduced the Electoral Disclosure and Funding Amendment Bill 2024 (the Bill). The Bill seeks to address some of the shortcomings of the *Electoral Disclosure and Funding Act 2023* and *Electoral Matters (Miscellaneous Amendments) Act 2023,* which entered into force on 1 July 2024. The Bill would lower the

[1] Parliament of Tasmania (2024) *Inquiry into the Electoral Disclosure and Finding Amendment Bill 2024 (No. 9): Terms of Reference,* https://www.parliament.tas.gov.au/__data/assets/pdf_file/0021/83145/Resolution.pdf

[2] Australia Institute, HRLC and ACF (2021) *Submission: Electoral Act review,* https://australiainstitute.org.au/report/submission-electoral-act-review/

[3] For example: Browne and Carr (2022) *The case for truth in political advertising reform in Tasmania* https://australiainstitute.org.au/report/the-case-for-truth-in-political-advertising-reform-in-tasmania/, *Tasmanian civil society organisations call for electoral reform before it is too late*, https://australiainstitute.org.au/post/tasmanian-civil-society-organisations-call-for-electoral-reform-before-it-is-too-late/; *Inadequate electoral reform leaves truth and transparency behind*, https://australiainstitute.org.au/post/inadequate-electoral-reform-leaves-truth-and-transparency-behind/

[4] Browne and Carr (2024) *Democracy Agenda for the 51st Tasmanian Parliament*, https://australiainstitute.org.au/report/democracy-agenda-for-the-51st-tasmanian-parliament/

[5] Browne (2023) *Principles for fair political finance reform*, https://australiainstitute.org.au/report/principles-for-fair-political-finance-reform/; (2024) *Submission - Review of the 2023 NSW election*, https://australiainstitute.org.au/report/submission-review-of-the-2023-nsw-election/; Browne and Connolly (2023) *Submission: Money and power in Victorian elections*, https://australiainstitute.org.au/report/submission-money-and-power-in-victorian-elections/; Browne & Walters (2023) *Securing transparency and diversity in political finance*, https://australiainstitute.org.au/report/securing-transparency-and-diversity-in-political-finance/; Morison and Browne (2023) *Submission: 2022 Victorian state election inquiry*, https://australiainstitute.org.au/report/submission-2022-victorian-state-election-inquiry/

donation disclosure threshold, require real-time donation disclosure, impose donation and spending caps on candidates, political parties and third parties and introduce truth in political advertising laws.

This submission analyses the Bill in the light of the shortcomings of existing legislation, risks to charities, and the Australia Institute's findings that well-meaning but misguided reforms in New South Wales and Victoria have made those states less democratic and less representative.

Charities at risk

Recent research by the Stronger Charities Alliance has reviewed spending patterns by charities across different Australian jurisdictions, in the first assessment of how charities are regulated in elections. The *Regulating charities in Australia elections* report found that despite being responsible for less than 1% of electoral expenditure, charities are at risk of having their voices further marginalised under proposed federal electoral reforms.[6]

An important aspect of such reforms is how electoral laws treat 'third parties.' These are organisations that normally undertake other business but campaign during elections. They don't field candidates, and include trade unions, businesses, industry peak bodies, charities and other not-for-profit organisations.

The Joint Standing Committee on Electoral Matters (JSCEM) final report on the 2022 federal election articulates in considerable detail why charities are different to other types of third parties, including that they are not permitted to have a political purpose, and that everything they do must be for public benefit in furtherance of their charitable purpose.[7] This is closely monitored by the charities regulator, the Australian Charities and Not-for-profits Commission (ACNC).

The *Regulating charities in Australia elections* report makes four recommendations relevant to the current inquiry:

1. Reforms should protect the involvement of charities in elections, particularly given how under-represented their voices have been historically.
2. Third party campaigners should not be subject to real-time disclosure.
3. If donation caps are implemented, charities registered under the ACNC should be exempt (as recommended by the Joint Standing Committee on Electoral Matters).
4. If spending caps are implemented, they should apply to all entities, including third party campaigners and charities that are third party campaigners.

[6] Stronger Charities Alliance and Australian Democracy Network (2024) *Regulating charities in Australia elections*, https://www.strongercharities.org.au/2024/07/03/report-regulating-charities-mr/

[7] JSCEM (2023) *Conduct of the 2022 federal election and other matters - Final Report*; https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/~/link.aspx?_id=B0EB44BCE6544D4488F8F90E44E0AA37&_z=z

Exceptions needed for charities

Third party campaigners at elections are fundamentally different to political parties, candidates and associated entities and should be regulated in a fair and proportionate way which reflects these differences.

Exceptions currently exist for aspects of disclosure for charities under federal law, and the Joint Standing Committee on Electoral Matters (JSCEM) recommended that charities be exempt from donation caps in its final report in 2023 last year (recommendation 13).[8]

Among other outcomes, the Electoral Disclosure and Funding Amendment Bill 2024 would require third party campaigners to:

- Disclose all political donations over $1,000
- Not accept political donations over $3,000, cumulative over four years
- Report every week outside of the last week of an election and every 24 hours within the last week of an election period
- Not incur election expenditure over $83,000.

The donations cap for third parties will prevent many from being able to engage in electoral expenditure almost entirely because of their reliance on donations for income. It will do nothing to stop corporates or industry peak bodies from using their profits or membership fees, so the law is discriminatory.

The real time disclosure will discourage community and charity voices for very little public interest benefit. It is a difficult burden even for a political party or candidate, let alone for third parties for whom electoral material is likely a very small portion of their work.

They also require disclosure from time of receipt – which is impossible for organisations that receive donations long before an election, and long before what they may know they'll spend it on.

As noted by the Stronger Charities Alliance and the Australian Democracy Network in their June 2024 discussion paper:

> It is critical that any changes to regulations focus the burden of compliance on the major players, and do not intentionally or inadvertently diminish the role of charities

[8] JSCEM (2023) *Conduct of the 2022 federal election and other matters – Final report*; https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/~/link.aspx?_id=B0EB44BCE6544D4488F8F90E44E0AA37&_z=z

> in our electoral system given the role they play in public interest advocacy in line with their charitable purposes.[9]

As noted above, charities that qualify as third party campaigners are particularly vulnerable to being impacted, and in some cases, silenced by this legislation because of their reliance on donations for income. Other types of third party campaigners at elections, like corporations and industry bodies, use non-donation income like profits or membership fees for campaigning, which is not captured at all under these disclosure requirements.

Recommendation 1

Third parties should be exempt from provisions relating to donations caps and real-time disclosure (proposed sections 28C and 43).

If the Parliament is not willing to exempt all third parties, at the very least charities registered by the Australian Charities and Not-for-profits Commission should be exempted.

[9] Stronger Charities Alliance and Australian Democracy Network (2024) *Regulating charities in Australia elections*, p. 5

Necessary reforms neglected

THIRD PARTY LOOPHOLE

Despite the passage of the *Electoral Disclosure and Funding Act 2023,* Tasmania still has the weakest regulation of third party campaigners in the country. Table 1 compares third party regulation across Australian jurisdictions. This law does little to stop big industries, such as gambling and salmon industries, or property developers, from far out-spending other voices in an election campaign.

The *Electoral Disclosure and Funding Act* includes a loophole that makes it easy for third-party campaigners to hide political donations from public view: only donations received during an election campaign period need be disclosed, meaning that an industry lobby group could receive a major donation six months and one day prior to the election with no requirement to declare the source of the donation.

This bill fails to close this loophole.

Political donations to third party campaigners made outside election campaign periods should have to be disclosed (in a way that actually makes them transparent, not as an aggregated sum in an expenditure return). Appropriately regulating third parties is important in order to avoid political parties 'outsourcing' their campaigning to third-party campaigners.

If this is not addressed (as was discussed in the House of Assembly debate) it is true that charities will have fewer difficulties in disclosing political donations used to incur electoral expenditure, because they can just choose to spend donations received prior to the commencement of the election campaign period, like all other third parties. However, this makes the regulation of all third-party campaigners virtually meaningless.

Recommendation 2

Amend the bill to require third-party campaigners to disclose all political donations above a threshold used to incur electoral expenditure, regardless of when they were given for that purpose.

AMENDMENT TO ALLOW CHARITIES TO COMPLY

Third parties operate very differently to political parties and disclosure at the time of receipt is not practicable, especially for charities. Charities, unlike political parties and candidates, do not receive political donations (or tied donations generally). Charities receive donations year-round for use in pursuit of charitable purpose. It is only in the lead up to an election that the regular advocacy activities of charities may be captured under the definition of electoral expenditure.

It is therefore extremely difficult, and often impossible, to predict whether or not a donation may, in the future, be used for electoral expenditure at the time it is received. Such reforms could follow the model used in Queensland whereby third parties declare the source of donations within 7 days *from the time they are used to incur electoral expenditure*.[10]

It is worth noting that it is primarily charities who will be impacted and even silenced by poorly formulated electoral reforms. Other types of third parties at elections like corporations and industry bodies can use non-donation income like profits or membership fees for their campaigning and avoid disclosure requirements altogether.

In summary, these combined recommendations would, in this order:

1. Require donations over the threshold used to incur electoral expenditure to be disclosed, *regardless of when they were received*; and
2. Require disclosure of those donations from the point of *expenditure*, to ensure charities can actually comply.

Recommendation 3

Disclosure for third party campaigners should be required by reference to when the electoral expenditure is incurred, not when the donation is made, to ensure charities can comply.

The revised section 43 of the *Electoral Disclosure and Funding Act* would read as follows (additions in yellow highlighter):

> If a reportable political donation is~~, during an election campaign period in relation to an Assembly election,~~ received, by or on behalf of a person who is or becomes a third-party campaigner in relation to the election, for the purposes of incurring, during an election campaign period in relation to an election, electoral expenditure by the person, the official agent in relation to the person is required to disclose the

[10] Electoral Regulation 2013 (Qld), r. 8B, https://www.legislation.qld.gov.au/view/whole/html/inforce/current/sl-2013-0013

donation in a donation declaration that is lodged under section 49 within 7 days after whichever of the following days occurs last:

(a) the day on which the person becomes a third-party campaigner in relation to the election;

(b) the day on which the political donation is ~~received~~ used to incur electoral expenditure.

AMENDMENTS TO BROADEN THE DEFINITION OF GIFT

Currently, the definition of *gift* in the *Electoral Disclosure and Funding Act* does not explicitly include very common contributions to political parties, associated entities and third-party campaigners, such as membership fees or levies, ticket prices other contributions raised through fundraising events. On top of this, subscriptions are explicitly excluded. The definition of *political donations* does not capture such contributions either.

It is commendable that the Electoral Disclosure and Funding Amendment Bill 2024 seeks to partially address this by counting party subscriptions of over $1,000 per financial year as gifts.[11] However, it does not seek to broaden the definition of gift beyond party subscriptions.

These types of contributions pose the same corruption risk as donations and should be captured by disclosure obligations. To address this, amendments should include a clause that requires disclosure if the money is given with the intent of, or used for the purpose of, incurring or reimbursing electoral expenditure.

Recommendation 4

Include a clause that requires disclosure if the money is given with the intent of, OR used for the purpose of, incurring or reimbursing electoral expenditure.

Recommendation 5

The definition of *gift in kind* should be amended to include the payment of membership fees or subscriptions paid to a registered party that exceed the threshold. The meaning of *political donation* should also be amended to make it clear that such "extra" amounts are political donations for the purposes of the Act and apply to third-party campaigners.

[11] Currently under the Act, all party subscriptions are "not taken to be a gift".

Table 1: Regulation of third parties in Australia

	Cth	QLD	NSW	Vic	SA	NT	ACT	WA	Tas	2024 Amendment Bill (Tas)
Threshold for becoming a 3rd Party	$16,300	$6,000	$2,000	$4,670	$10,000	$1,000	$1,000	n/a	$5,000	$1,000
Threshold for becoming a Significant 3rd Party	$250,000	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
"Electoral expenditure" defined with dominant purpose	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No change
Spending cap	No	Yes	Yes	No	No	No	Yes	Yes	No	$83,000 for candidates & third party campaign-ers; $830,000 for parties
Donation cap	No	Yes	Yes	Yes	No	No	No	No	No	Yes, $3,000 cumulative over 4 years
Type of return due	Annual	Election only	Annual + half yearly	Annual	Half yearly	Annual + election, Periodic Returns are due with increasing frequency before an election	Election only	Annual + election	Election only	No change (election only)
'Real-time' disclosure of donations used on political expenditure	No	Yes $1,000 or more within 7 days	Yes 21 days in the lead up to an election (6 months)	Yes $1,170 or more, within 21 days	Yes Over $5,000, within 30 days	No	No (yes for parties)	Yes Over $2,600, within 7 days	No	Weekly (non election) every 24 hours (election)

Source: Stronger Charities Alliance and Australian Democracy Network (2024) *Regulating charities in Australia elections;* Electoral Disclosure and Funding Amendment Bill 2024.

PUBLIC FUNDING

Tasmania's new public funding system (legislated in 2023 and due to come into effect at the next Tasmanian election) is modelled along the lines of public funding systems in operation in other states and territories and at the federal level: it is based on the candidate or party's result at the previous election.

This puts new entrants – whether they are new independent candidates or new parties – at a disadvantage, because they must raise through donations the money that established parties and candidates have received from the taxpayer.[12]

In addition, the design of public funding eligibility favours major parties. They are more likely to exceed the threshold to be eligible for public funding and more likely to have spent enough to be able to claim their full entitlement.[13]

A viable alternative to the current public funding model is the "democracy voucher" system in use in Seattle, Washington. It allows parties and candidates to raise money based on how much support they currently have among the public, not how many votes they received at the last election.[14]

One of the recommendations in the donations cap section relates to democracy vouchers.

Effect of donation cap under pro-incumbent public funding

The Electoral Disclosure and Funding Amendment Bill 2024 does not address the state's legislated public funding system. By itself, this is just a regrettable absence. What makes this absence dangerous is that the bill does intend to introduce donation caps, which work together with generous public funding to lock out new entrants.

In the absence of donation caps, new entrants can overcome an incumbent's taxpayer-funded advantages through private contributions from members of the public. When a donation cap is in place serving to limit the amount of money candidates can raise, the taxpayer-funded advantages of incumbents are likely to be insurmountable.

[12] Browne and Walters (2023) *Securing transparency and diversity in political finance*, pp. 5–7

[13] Browne (2024) *Submission - Review of the 2023 NSW election*, pp. 12–14; Browne and Connolly (2023) *Submission: Money and power in Victorian elections*, pp. 12–15

[14] Morison and Browne (2023) *Submission: 2022 Victorian state election inquiry*, pp. 17–19

Donation cap excludes politicians

The Electoral Disclosure and Funding Amendment Bill 2024 creates an exception to the donation cap for an (independent) candidate making a contribution to their own campaign and for party candidates, councillors, MLAs, MLCs, federal MPs and federal senators making a contribution to their own party.[15]

NO CAP FOR CANDIDATES FAVOURS THE WEALTHY

The effect is that wealthy candidates can contribute many times more to their own campaigns or parties than any other Tasmanian voter can contribute. In a totally uncapped system, a candidate who is not wealthy themselves can at least raise money from wealthy donors. In the partially capped model proposed in the Electoral Disclosure and Funding Amendment Bill, even this avenue is closed off to candidates who are not wealthy.

The Australia Institute's analysis of Victorian donation data establishes that this risk is real. In Victoria, a candidate gave $110,000 to his party – 24 times larger than the maximum donation that any other Victorian could make. That one donation represents 4% of the total value of donations received by the Victorian Liberals over that election cycle.[16] When the Australia Institute looked at the Victorian Electoral Commission's database of disclosed donations, almost one in five (18%) of all donations were from candidates.[17]

In Tasmania's Hare–Clarke system, a party could add candidates to an electorate's ticket primarily or exclusively to act as an uncapped donor bankrolling more electorally-popular candidates. For example, a millionaire or billionaire like Clive Palmer could run in a Tasmanian state election and cover the entire costs of his party's election campaign, while parties without a billionaire backer would be limited to raising donations $3,000 at a time.

One reason for the exception to the donation cap for candidates is so a candidate can fund their own election campaign and avoid being conflicted, as they would be if they accepted donations. Not imposing a donation cap on *any* candidates or parties would preserve these self-funded candidates without unduly disadvantaging less wealthy candidates, who can still seek out donations as normal – and be required to disclose them.

Alternatively, a democracy voucher system would allow candidates to raise donations without being beholden to anyone (except the Tasmanian people).

[15] s 28C(4), s 28C(5)

[16] Browne and Connolly (2023) *Submission: Money and power in Victorian elections*, pp. 10–11

[17] Browne and Connolly (2023) *Submission: Money and power in Victorian elections*, pp. 10–11

NO CAP FOR PARLIAMENTARIANS AND COUNCILLORS LETS PARTIES RAISE LARGE SUMS

Many parties expect parliamentarians to contribute a share of their publicly funded salaries towards the cost of their election campaigns. Sometimes this is formalised as a levy.

Victorian political finance law exempts donations from parliamentarians and staffers from its donation cap. The effect is that the Victorian Labor Party received $3.0 million from its mandatory levy on staffers and 70 MPs compared to $801,000 in donations from the remaining six million Victorians. The effect is to concentrate financial power in the political class.

A simple thought experiment shows that the same is likely to occur in Tasmania if donation and spending caps are introduced. The Liberal Party could fund an $830,000 election campaign (the maximum under the caps proposed in the bill) entirely from a 10% levy on MLAs and MLCs or mostly from public funding. Labor could entirely fund a $830,000 campaign from a combination of a 10% levy and public funding. The Greens could fund a $600,000 election campaign from a combination of a levy and public funding.

The effect is that political parties have a reduced incentive to cultivate members and supporters, and they lose nothing from limiting or banning political donations altogether – at the expense of new entrants who do not receive public funding and have no MLAs and MLCs to impose a levy on.

Recommendation 6

Either remove donation caps from the bill or introduce a democracy voucher system alongside donation caps.

Real-time disclosure

The real-time disclosure requirements are unnecessarily strict and will likely be used to justify more public funding for political parties with parliamentary representation.

Reporting every week outside of the last week of an election and every 24 hours within the last week of an election period is a difficult burden even for a political party or candidate, let alone for third parties for whom electoral material is likely a very small portion of their work.[18] Parties and candidates with parliamentary representation receive administrative funding from the taxpayer, but that is not the case for candidates, parties without parliamentary representation and third parties.

When a single donation exceeds the donation threshold, disclosure is straightforward. But the legislation also requires multiple small donations from the one source to be disclosed when the aggregate exceeds the threshold. This is an understandable and necessary anti-avoidance measure, but the effect in conjunction with such a short reporting period is to require all donations, however small, to be checked weekly in case they cause a donation to tip over the threshold.

Recommendation 7

Consider a longer reporting period. The Australia Institute has previously recommended monthly or quarterly reporting outside of an election period and weekly during an election period,[19] even for political parties and candidates.

Or, consider other ways real-time disclosure laws could be made less administratively burdensome, for example only requiring small donations to be aggregated quarterly even if one-off donations above the threshold must be disclosed more frequently.

If real-time disclosure requirements for candidates and parties remain so onerous, consider less onerous requirements for third parties.

[18] See for example Browne (2021) *No good deed goes unpunished*, https://australiainstitute.org.au/report/no-good-deed-goes-unpunished/

[19] Browne and Shields (2022) *Fortifying Australian democracy: submission to the inquiry into the 2022 election*, pp. 7–8, https://australiainstitute.org.au/report/fortifying-australian-democracy/

Spending caps

Parliamentarians receive significant incumbency advantages, including their salaries, staff, communications allowances and travel allowances. Parties and independent MPs will also receive administrative funding in Tasmania.

These advantages are less pronounced in Tasmania than they are at the federal level because the sums of money involved are less. However, serious consideration should be given to the possibility that they still exist, and that they make it unfair for new candidates and parties to be subject to the same spending cap as incumbent parliamentarians and parties with incumbent MPs.

As noted in the *Democracy Agenda for the 51st Tasmanian Parliament,*[20] Tasmania's Hare–Clarke electoral system does tend to make spending caps fairer in operation than they are in other states with winner-takes-all single-member seats.

The Electoral Disclosure and Funding Amendment Bill 2024 uses a two-tiered spending cap system. A candidate cannot spend more than $83,000 and a party cannot spend more than $830,000 in an election campaign. Since there are five electorates, the effect is that a party can outspend an independent candidate two-to-one in an electorate.

However, the major parties are in practice usually trying to elect more than one candidate. In the 2024 Tasmanian state election, the Liberals won between 2 and 3 seats in each electorate; Labor 2 seats in each electorate; and the Greens between 0 and 2 seats in each electorate. It seems appropriate then that they would be able to outspend an independent candidate trying to elect just themselves.

There is a concern that political parties may form that are focused on just one or two electorates, which in effect would allow them to outspend other parties.

[20] Browne and Carr (2024) *Democracy Agenda for the 51st Tasmanian Parliament*, p. 12

Truth in political advertising laws

Section 197 of the *Electoral Act 2004* details the types of electoral matter that are prohibited on the basis that they are, or are likely to, mislead an elector. However, the section is narrowly focused – it is limited to preventing misleading voters about casting a valid vote, that voting is not compulsory, or that electoral matter is an official communication from the Tasmanian Electoral Commission if it is not.

Despite many examples of why Tasmania needs truth in political advertising laws, the Tasmanian Government continues to object to such laws. In response, the Australia Institute published *The case for truth in political advertising reform in Tasmania*.[21]

The Electoral Disclosure and Funding Amendment Bill would give the Electoral Commissioner the power to require an advertiser to withdraw or retract misleading political advertising. In the truth in political advertising laws in force in South Australia and the Australian Capital Territory, the Commissioner can only request a withdrawal or retraction. Only the courts can compel a withdrawal or retraction.

The power to control what electoral matter is displayed should rightly lie with the judiciary, not the executive arm of government. The alternative is to leave open the possibility that a partisan commissioner could use their power unreasonably, and risks politicising the position of the Electoral Commissioner.

Further, the power to *require* a withdrawal or retraction is not needed to give truth in political advertising laws teeth. In South Australia, the Electoral Commissioner's requests are usually respected – and it is the existence of an adverse finding by the commissioner that hurts wrongdoers more so than the withdrawal or retraction itself. In practice, recourse to the courts has not been needed in most cases.

The Electoral Disclosure and Funding Amendment Bill, like legislation in the ACT, does not provide for an election to be voided in the case of misleading advertising (that is likely to have affected the result; note that this is considered on a seat-by-seat basis). Including such a provision would further avoid the problem of a decision needing to be made in the heat of an election campaign, since it provides a remedy that can apply after election day.

[21] Browne and Carr (2022) *The case for truth in political advertising reform in Tasmania*; https://australiainstitute.org.au/report/the-case-for-truth-in-political-advertising-reform-in-tasmania/

Recommendations 8 & 9

Amend the Bill to extend the provisions of section 197 of the *Electoral Act 2004* on misleading and deceptive electoral matter to include political advertising, modelled on ACT legislation, as follows.

After subsection 197(f), insert:

"(g) (1) A person commits an offence if—

(a) the person disseminates, or authorises the dissemination of, an advertisement containing electoral matter; and

(b) the advertisement contains a statement purporting to be a statement of fact that is **misleading** or **deceptive** to a material extent.[22]

Penalty: Fine not exceeding 200 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if it is proved by the defendant that the defendant—

(a) took no part in deciding the content of the advertisement; and

(b) could not reasonably be expected to have known that the statement was misleading or deceptive.

The defendant has an evidential burden in relation to the matters mentioned in s (2).

(3) If the commissioner is satisfied that subsection (1) (a) and (b) apply, the commissioner may ask the person, in writing, to do 1 or more of the following:

(a) not disseminate the advertisement again;

(b) publish a retraction in stated terms and in a stated way.

(4) If a person is found guilty of an offence against this section, the court must take the person's response to any request under subsection (3) into account in deciding the penalty for the offence.

(5) On application by

(a) the Electoral Commissioner; or

(b) a person who has made a complaint under section (1) (a) and (b);

[22] Australian consumer law uses **misleading or deceptive**, to regulate advertising rather than inaccurate and misleading, which is used in South Australian truth in political advertising law.

the Supreme Court may, if satisfied that subsection (1) (a) and (b) apply, order the person to:

(c) not disseminate the advertisement again; and

(b) publish a retraction in stated terms and in a stated way."

Consider providing for an election to be voided in the case of misleading advertising, modelled on South Australian legislation.

After subsection 197(g), insert:

"(h) An election may be declared void on the ground of misleading advertising but only if the Court of Disputed Returns is satisfied, on the balance of probabilities, that the result of the election was affected by that advertising."

Conclusion

Imagine a new political party or an independent candidate hopes to contest the 2028 Tasmanian state election under the Electoral Disclosure and Funding Amendment Bill 2024. They face Liberal and Labor parties who do not need to devote any time to fundraising, because public funding and levies on parliamentarians alone are enough to meet the $830,000 spending cap. Perhaps they also face a millionaire or billionaire candidate who bankrolls his or her party.

Each donation this party or candidate receives is capped at $3,000, meaning a new party would require 277 or more donations to get them to where the major parties start from. It would be tempting to nominate one or more candidates who could contribute $30,000 or $60,000 to overcome some of this funding shortfall.

Even if this new party raised $830,000, they would in effect find that the major parties' campaigns are much better resourced – because they have the staffing, office and other resources that are the prerogatives of incumbent parliamentarians.

While the *Electoral Disclosure and Funding Amendment Bill 2024* seeks to address the shortcomings of existing legislation, it does not adequately account for fairness and a level playing field for new entrants. Unamended, it will prevent community and charity voices from being able to engage in election debates almost entirely. Without additional amendments, the Bill will do nothing to strengthen regulation of corporates and industry bodies seeking to influence elections as third parties, and will continue to allow political parties to effectively outsource their campaigns. Furthermore, the truth in political advertising laws proposed should be amended to better reflect those in place in SA and the ACT.