

SUBMISSION TO REVIEW OF TASMANIAN ELECTORAL ACT 2004

Consultation Issue 1: Whether consideration should be given to amending the Act to clarify the application of authorisation requirements for candidates in elections to online, social media and digital communication content, having regard to the models applied in other Australian jurisdictions.

Prohibit the dissemination of electoral matter that does not include the relevant authorisation information.

The only exception should be if the electoral matter is disseminated on or through social media and forms part of the expression of the individual's personal political views and the individual is not paid to express those views.

Social media is defined as internet or mobile broadcasting-based technology or applications through which individuals can create and share content generated by the individual, e.g. internet forums, blogs, wikis, text messaging etc.

If the social media is directing others how to vote it requires authorization.

Consultation Issue 2: Whether consideration should be given to amending section 196(1) of the Act which requires written consent to print, publish or distribute any advertisement, 'how to vote' card, handbill, pamphlet, poster or notice which contains the name, photograph or a likeness of a candidate or intending candidate in an election so that it only applies to 'how to vote' cards.

The concern here would be that opponents of a candidate may publish information or policy claims that are just wrong. False 'how to votes' and other documentation have been printed on the mainland and we must ensure that is illegal and punished.

The provision provides protection for Candidates and Parties. Freedom of speech does not mean printing anything you want without taking responsibility for your words.

Misrepresentation of a party's or candidate's policy should be prohibited.

Consultation Issue 3: Whether consideration should be given to repealing section 198(1)(b)(i) to remove the ban on newspaper advertising on polling day, consistent with other Australian jurisdictions.

Since newspapers are read by fewer people than social media sites and of less influence than television this clause should be removed unless some means can be found to stop all media advertising. The reason for banning would be to prevent material being published without a right of reply.

Consultation Issue 4: Whether consideration should be given to amending the definition of 'electoral matter' in the Act to narrow the definition and/or remove the deeming provision given the broad range of matters that may be captured by the current definition.

It is not clear to what this refers

Consultation Issue 5: Whether consideration should be given to amending the Act to allow a returning officer, as directed by the Tasmanian Electoral Commission, to return a writ certifying the

election of a part of the number of members required to be elected for a division to address the issues that could potentially arise in delaying the formation of a Government under the current Act where ballot papers are lost or destroyed.

We agree with the TEC proposal to amending the Act so that a returning officer, as directed by the TEC, may return a writ certifying the election of a part of the number of members required to be elected for a division in the event of a number of ballots being damaged or missing and where it is clear that those persons would be elected. Whereas this might not avoid the need for those members subsequently to face a by-election, it would enable them to take their places in the Assembly and assume ministerial or parliamentary office, and for the Assembly itself to proceed to business.

Consultation Issue 6: Whether consideration should be given to the means of publishing certain matters, such as the announcement of candidates, registration of political parties and declarations of elections, by the Tasmanian Electoral Commission.

Public announcements should not have to be in newspapers as many people do not read them but should be clearly promoted to the community. Many of these matters are announced in newspaper articles anyway but maintaining up-to-date websites would seem to be important

Consultation Issue 7: Whether consideration should be given to changes to Part 4 of the Act in relation to the registration of political parties to provide greater transparency in this process.

The Tasmanian Electoral Commission should not provide a copy of the party register on request, because this reveals personal information. A copy should be available for public viewing, consistent with other Australian jurisdictions.

An application for registration of a party should be accompanied by a copy of the party's constitution.

Restricting party names by reference to a character limit rather than a maximum number of words seems advantageous.

The Tasmanian Act should require an application for the registration of a party to set out the names and addresses of at least 100 members of the party. These people should be current registered members and the statutory declarations stating such should have been made within the 3 previous months.

Consultation Issue 8: Whether consideration should be given to amending the Act to classify express and interstate pre-poll ballots (for example, votes cast in Antarctica) as postal ballot papers to allow them to be treated in the same way under the Act, including to ensure the relatively small number of votes received in this way are less easily identifiable.

The Act should classify these votes as postal votes.

Consultation Issue 9: Whether section 100 of the Act should be amended to require a ballot paper to include instructions which are consistent with the requirements set out in section 102 for the marking of ballot papers, to remove the apparent inconsistency in the Act between these two provisions.

Section 102 clearly sets out the requirements for marking a ballot paper. It seems appropriate that

any instructions provided on ballot papers be consistent with those requirements. It is therefore recommended that further consideration be given to amending section 100 to require a ballot paper to include instructions consistent with the section 102 requirements.

Consultation Issue 10: Whether further consideration should be given to possible changes that would allow otherwise 'informal' votes to be treated as formal votes.

The current provision, section 103 of the Tasmanian Act, allows for a ballot paper to be treated as formal if there is an omission or a duplication in the numbering but only where this has occurred above the minimum number of preferences. The provision also allows an otherwise informal ballot paper to be counted at the discretion of the returning officer.

We believe the current rules are fair. It would not be possible to determine which duplicate number should be counted.

Consultation Issue 11: Whether consideration should be given to any changes that may be required to the current offence, enforcement and compliance provisions of the Act as well as the creation of any new offence, enforcement and compliance provisions in relation to disclosure, third party regulation and any other new provisions that may result from this Review. Specific issues to be considered in relation to the current Act include whether further consideration should be given to amending the Act to ensure the offences of electoral bribery (section 187) and electoral treating (section 188) are clearly enforceable, including whether the definition of bribery in the Act should be narrowed and whether it is appropriate to introduce a fault element to the offence.

These matters should be treated as crimes under laws that are enforceable and with appropriately severe punishment

Consultation Issue 12: Should changes be made to the composition of the Redistribution Tribunal established under the Legislative Council Electoral Boundaries Act 1995 to address the overlap of membership between the Redistribution Committee and the Redistribution Tribunal?

There should not be an overlap between the Committee and the Tribunal so that each can carry out its function with clear independence.

Consultation Issue 13: If state-based disclosure rules are to be introduced in Tasmania, that consideration should be given to whether the Act should define 'gift' or donation for the purposes of disclosure, options for the thresholds and timeframes for reporting and any implementation issues, including compliance and enforcement.

A gift or donation is considered to be any monetary gift or donation in kind which contributes to the election campaign of an individual or party. Donations in kind could include advertising, vehicles, catering, printing etc.

Donors should include individuals, organisations or companies who donate money or gifts in kind to a political party, or candidate at any time.

There should be a financial threshold over which gifts or donations should be declared. Gifts and donations with a cumulative total valued above \$1500 over a financial year should be declared.

Candidates and parties should publicly declare gifts or donations within 10 business days on the party or candidate website.

Expenditure that needs to be reported on during the period from six months before the election to the close of polling includes:

- . Broadcasting electoral advertisements (including production costs).
- . Publishing electoral advertisements (including production costs).
- . Displaying electoral advertisements at a place of entertainment, such as a cinema (including production costs).
- . Production of campaign material requiring authorisation (e.g. how-to-vote cards, posters and pamphlets).
- . Direct mailing (including printing and postage).
- . Internet and social media advertising.
- . Opinion polling and electoral research.

Good financial management would mean records of these matters should be kept no matter when an election is called.

Candidates endorsed by a registered political party may submit a 'nil' return if their campaign expenditure is transacted through the political party. The party will then report the expenditure as part of its electoral return.

If a candidate receives and/or spends funding specific to their campaign, they will need to lodge an electoral return containing these details.

Consultation Issue 14: If a state-based disclosure regime is introduced in Tasmania, consideration should be given to the need for public funding of electoral expenditure, consistent with most other Australian jurisdictions.

There should be a threshold percentage of first preference votes that must be received by a candidate prior to being eligible for public funding. The 4 per cent of other states is reasonable.

The state should follow the Commonwealth arrangements for public funding.

Public funding can be reduced or withheld in the event of an offence or contravention of the electoral regime

Consultation Issue 15: Whether caps on electoral expenditure for candidates for the House of Assembly should be considered.

Caps on electoral expenditure should be considered, and the amount should be indexed for cost of living rises.

An advertising spending limit should be set for all elections. This should apply to all candidates. There should be a cap on spending by parties so that expenditure on each of their candidates does not exceed the individual cap.

With an upper limit to advertising spending on each candidate of \$20,000, a party with 5 candidates can only spend a total of \$100,000 per electorate in the 6 months before an election.

A sitting government should not be able to spend government funds advertising government activities or services in the 6 months before the election with the exception of the Electoral Commission's advertising of matters essential to the running of the election.

Tasmania should have a fixed electoral cycle in the House of Assembly with the proviso that should there be malfeasance, demonstrable corruption or inability to govern the Governor retains the power to call a new election.

Travel should not be included in an expenses total because it would be unfair to compare costs for Lyons with those in Clark.

Consultation Issue 16: *If a state-based disclosure regime is introduced for political donations received by political parties and candidates in Tasmania, whether corresponding regulation of disclosure of donations for third parties should also be introduced.*

The term third party should include:

- . Third party campaigners.
- . Associated entities: entities that are controlled by or operating for the benefit of a political party, including those with or without formal linkages.

This could not be controlled or enforced in a reasonable and fair way. Parties and candidates often have no control over the issues or lines taken by these groups.

Consultation Issue 17: *If additional regulation for third parties is introduced in Tasmania, consideration should be given to the following matters:*

Whether the Act should adopt a broad definition of electoral activity for the purposes of disclosure requirements.

Whether political campaigners should be defined in the Act and required to disclose all political expenditure over a specified amount.

That political campaigners should be required to disclose all political donations received over a designated threshold within a specified period, which should be consistent with the threshold and period set for the disclosure of political donations received by political parties and candidates.

That 'associated entities' (entities that are controlled by or operate for the benefit of a registered political party) should be regulated and whether their disclosure obligations should be the same as those for political parties and candidates.

Whether third party campaigners should be required to register with the Tasmanian Electoral Commission prior to making any electoral expenditure.

Whether political donors should be required to disclose all donations over a designated threshold to the regulator within a specified period, which should be consistent with the threshold and period set for the disclosure of political donations received by political parties and candidates.

Definitions of what might be included and which groups should be included make this impossible to enforce in an open, clear and fair manner

Consultation Issue 18: *Whether the need for caps on political donations by third parties should be considered at a later stage in light of additional research and data including evidence that may be gathered through any new state-based disclosure regime and regulation of third parties, if introduced.*

This should be considered at a later date.

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