



Tasmanian Unions

Fairer ▶ Stronger ▶ Community

Electoral Act Review

Submission to the Tasmanian Government
Department of Justice,
Office of the Secretary

20 July 2018

1. Introduction

Unions Tasmania supports and welcomes the review of the Tasmanian *Electoral Act 2004* (**'Electoral Act'**) and is pleased to make a submission addressing the Terms of Reference and guiding principles set out in the Tasmanian Government's *Electoral Act Review - Fact Sheet 1*, June 2018 (**'Fact Sheet'**).

Unions Tasmania is the peak body for trade unions in Tasmania. It is also the local branch of the Australian Council of Trade Unions (ACTU). With 26 affiliate unions in Tasmania, we represent approximately 50,000 union members across industry, in both the public and private sectors.

Unions Tasmania supports transparency in elections. We believe the community has a right to know who is giving money to political parties or campaigns and how much that funding is.

Timely, up to date information on political donations and election spending allows for adequate public scrutiny before the community votes.

Union members have expressed concerns about the role of business and the gambling lobby in the 2018 State Election and the extent of their influence. We note similar concerns have been raised in the wider community. Whilst the overall sum of money that paid for obviously significant advertising, for example across television, social media, signage, billboards and newspaper advertising will never be known, it has led to suggestions of corruption, contributing to further decline in trust and low opinions of politicians, which ultimately damage the community's engagement with political representatives.

1.1.Importance of unions in the democratic process

Unions are important actors in the democratic process. Members join unions in part because of this role. Our members expect us to campaign in different spheres – workplace, community, public, industrial and political – when it advances their interests. While change for union members is often negotiated at the workplace level, the underpinning industrial relations system is embedded in State and Federal legislation that can only be changed by lawmakers.

Unions Tasmania is not affiliated with a political party. Some individual unions are formally affiliated with the Australian Labor Party (ALP) but many are not. Unions Tasmania, however, does campaign on the issues that impact working Tasmanians and their families, as many advocacy and civil society organisations likewise do for their members' interests in Tasmania and Australia.

Many unions are already regulated under the Australian Government Registered Organisations Commission or Federal legislation, and already make declarations about political campaigning.

2. Modernising the current Tasmanian Electoral Act with specific examination of sections including 191(1)(b); 196(1) and 198(1)(b);

The Fact Sheet refers to criticism that sections 191(1)(b); 196(1) and 198(1)(b) of the Electoral Act may not apply effectively to online communication and may require review in a digital age.

2.1. Section 191(1)(b)

This section provides that any publication of election matter on the internet must display an authorisation.

Unions Tasmania supports legislation that requires an authorisation on printed electoral matter. We would also support the inclusion of authorisations on digital content such as graphics or memes. We contend this is not an overly onerous obligation and would ensure that consumers of digital content are aware of the source of the material. In an age where Facebook pages can be set up for a cause or campaign without clearly identifying the organisation or individual behind them, we contend that it is reasonable that those who are authoring those campaigns are identified.

We do, however, acknowledge that authorisations on online content may need to be limited. We need to balance the rights of individuals to lawfully express their views and we will need to carefully consider what digital content is captured by requirements to authorise. It may not, for example, be reasonable or practicable to expect authorisations for social media posts that are simply photos taken at functions or campaign events or where individual citizens are making personal comment.

Unions Tasmania notes that, despite the absence of an obligation to do so, we included an authorisation in our online content that included a clear political message during the 2018 State Election.

2.2. Section 196(1)

This section provides that a candidate's name, photograph or likeness may not be used during an election without their permission. Whilst the Fact Sheet notes that this applies to written material, the section arguably already covers online communication, given the use of the word "publish" which is defined in Section 3 to include publication by the internet.

Candidate permission for the use of their name, photograph or likeness is not a requirement during federal elections where materials showing candidates and their views are commonly used. In a state election on the other hand, even simple actions such as reproducing a direct quote from a candidate are hindered under the existing rule.

Unions Tasmania supports changing this section to enable the use of candidate name, photo and likeness without permission.

2.3. Section 198(1)(b)

This section provides that on polling day, a newspaper may not publish advertisements to do with candidates or parties, and may not publish matters or comments relating to candidates, or the election campaign.

At present, the combined effect of our state Electoral Act and the Commonwealth's *Broadcasting Services Act 1992* is to create near total blackout conditions by polling day, with advertisements and commentary banned for the last three days for broadcast media, likewise for newspapers on polling day itself, and social media partially covered because of the ban on distributing advertisements on polling day in Section 198(1)(a) of the Electoral Act.

Unions Tasmania notes that newspapers do not just include objective reporting on the news of the day. Editorials and opinion pieces are frequently used to argue not just for issues but in favour of political parties. They often go so far as to endorse one party and actively campaign against another through editorial direction, story selection and editing. This means that newspapers can effectively act as advertisements without the inclusion of a single paid advertisement appearing inside.

Unions Tasmania does not support changing this section. We believe it would undermine the combined effect of the State and Commonwealth Acts which seek to ensure voters have clear space in which to make their own decisions free of influence on polling day.

3. Whether state-based disclosure rules should be introduced, and, if so, what they should include;

Unions Tasmania agrees that changes should be made following the 2018 State Election and state-based legislation regulating disclosure of gifts and donations to political parties should be introduced.

We submit that the following principles should be paramount in the system for disclosing gifts and donations to political parties.

1. The Tasmanian community deserves to know who is giving money and/or gifts to political organisations or funding certain campaigns and how much that funding is.
2. The system for disclosure should deliver free, transparent and timely public access to information about political donations and election spending.
3. Disclosure of gifts and donations to political parties and candidates should happen as close as practicable to real time – within days or weeks rather than months and years.
4. The system should aim to reveal multiple small donations or gifts which might in themselves sit under a disclosure threshold but which in combination would exceed the threshold.
5. We support consideration being given to a cap on donations from individuals and organisations;
6. No aspect of the system should seek to unfairly advantage one group over another;

7. The system should not impede unions and other civil society groups in their operations and ability to advocate for their members or in the public interest, and in fulfilling their role as important actors in the democratic process.
8. Ongoing additional funding of the Tasmanian Electoral Commission for the administration of this system should be sufficient to that there are adequate staff numbers, appropriately skilled and resourced for this body of work. This function must remain public and not be outsourced, to ensure transparency and accountability to the Tasmanian community.

We also seek clarification as to what provision will be made for periodic or other review of the legislation to ensure that the objective of achieving a robust, democratic and fair electoral system continues to be met.

4. The level of regulation of third parties, including unions, during Election campaigns.

4.1. The wording of this item should be amended

Whilst the Fact Sheet lists various third parties including unions, representative bodies, lobby groups and corporate bodies, only unions are specifically identified within the proposed terms of reference. This creates a clear implication of bias.

The business sector campaigns forcefully within the political sphere, enjoys unparalleled access to elected members of government and generally has funds at its disposal unmatched in the non-profit sector by civil society organisations including unions. The perceived undue influence of business interests in the 2018 State Election is evidently at the centre of community calls for electoral reform. Business should therefore be a focus of third party regulation and union members find it offensive that we have been targeted in the terms of reference without pointedly focusing on the business lobby.

We submit accordingly that this item in the terms of reference must be amended, either to read simply “The level of regulation of third parties during Election campaigns” or else “The level of regulation of third parties, including business, during Election campaigns.”

4.2. The regulation of third parties should not be the same as that for political parties

Unions and other civil society organisations are often recognised as third-party campaigners who campaign during an electoral cycle or on a particular issue, and, as such, we accept that third party campaigners should be regulated as part of any electoral disclosure system, however we make this critical point.

Third party campaigners are fundamentally different to political parties and should not have the same regime of regulation applied to them. As we will detail, unions and civil society

organisations do not have solely political aims. In the Tasmanian context, individual unions and Unions Tasmania are small organisations, many with only one or two staff in the State. In addition, for unions that are officially affiliated to the Australian Labor Party (ALP), they are already regulated as associated entities under Part XX of the *Commonwealth Electoral Act 1918*.

The Fact Sheet identifies protecting freedom of speech and minimal cost to the taxpayer as guiding principles in the Review. We agree with Premier Hodgman's recent statement that, "We need to balance a few important issues here. Firstly is the constitutional right to freedom of speech, because we need to be careful that whatever we do doesn't contravene our constitution and put us back into the High Court. We do need to look at any cost that could come with electoral reform as well because I'm sure Tasmanians would want to balance that against any other public interest test."ⁱ

Unions campaign to give voice to the concerns of workers, regardless of who is in government and play a significant role in their members' democratic participation. Members join unions in part because we exist to provide a collective voice in the democratic process that they would not have if they acted alone. Our members expect us to campaign in various spheres – workplace, community, public, industrial, political – when it advances their interests. The workplace relations system is embedded in State and Federal legislation that can only be changed by lawmakers; like other civil society organisations we must engage in the democratic process before, during and after elections.

We note that with respect to costs, Tasmanian taxpayers are also participants in the democratic process and therefore, financial costs to the taxpayer of this reform are two-fold, with both implementation and compliance costs to be considered.

The structure, functions and status of third parties compared to political parties are markedly different, as set out extensively in reports prepared for the NSW Electoral Commission in 2010ⁱⁱ and 2012ⁱⁱⁱ. In summary, key differences include:

- Whereas third parties such as unions campaign to win on issues, political parties are the only ones which campaign to win government, and which combine representative, electoral, participatory, agenda setting and governance functions, making them the central intermediary structure between society and government.
- Political parties are wholly political organisations, whereas most third-party campaigners have multiple organisational purposes and their campaigns are fluid and multidimensional. In addition to providing services to members, unions campaign year-round in the interests of their members, in the industrial and the political spheres. Unlike political parties, the practical separation of specific election campaign activities would prove distinctly challenging and cumbersome for third parties.

- Third party organisations such as unions are non-profit organisations which rely predominately on member subscriptions for their funding. Many are small organisations without inhouse resources to deal with complex or onerous compliance requirements.

Unions Tasmania points out that, in addition to any issues-based campaigning at election time, we have a number of other priorities that are greater than any individual election result. These include providing workplace health and safety (WHS) training to union officials and health and safety representatives, providing legal and industrial advice, connecting members of the public to their relevant unions, organising professional development and training, giving workers a voice on WHS and superannuation and recruiting members to unions (to name a few).

We submit that any system to regulate third parties during elections should take account of the differences between them and political parties outlined above and should not be designed to curtail the participation of civil society organisations including unions, in our democracy, for example by creating structural disadvantage for them, or being too complicated, burdensome or costly for them to implement.

5. Conclusion

Unions Tasmania welcomes this Review and supports the objective of achieving a robust, democratic and fair electoral system. We share community concern at the poor donations disclosure regime currently in place for political parties in Tasmania and the difficulty this presents for transparency in the democratic process, as has been widely criticized in the 2018 State Election with respect to the influence of business interests and the gaming lobby. We object to the targeting of unions within the terms of reference.

Union members are Tasmanian people and unions play a strong role in their democratic participation. We urge that any reform following on from this Review is firmly entrenched in the ideals of free and fair access to information and democratic participation.

ⁱ Compton, L. (Presenter). (2018, June 29). *Mornings* [Radio broadcast]. Tasmania, Australia: ABC Local Radio. 00:26:16

ⁱⁱ Tham, J., *Establishing a Sustainable Framework for Election Funding and Spending Laws in New South Wales: A Report Prepared for the New South Wales Electoral Commission* (2012) pp75-77, quoting Tham, J., *Towards a More Democratic Political Finance Regime in New South Wales* (2010) pp19-20

ⁱⁱⁱ Tham, J., *Establishing a Sustainable Framework for Election Funding and Spending Laws in New South Wales: A Report Prepared for the New South Wales Electoral Commission* (November 2012) pp77-82