Submission regarding Electoral Disclosure and Funding Bill 2021 and Electoral Matters (Miscellaneous Amendments) Bill 2021

Dr Kevin Bonham, 28 Sep 2021

I write to provide some comments on aspects of the Electoral Disclosure and Funding Bill 2021 and Electoral Matters (Miscellaneous Amendments) Bill 2021, and also a comment on the submission deadline.

Funding Model Contains Major Flaw

The proposed public funding model reimburses parties at $6 per vote for every candidate who either polls 4% of the primary vote or is elected. (124 (1) (a) of Disclosure and Funding Bill). This copies the method used for House of Representatives elections but it is wrong to use this method for a multi-member system. **Instead, public funding, whatever the amount, should be based on party or group totals, or on candidate totals for individual ungrouped independents only.** Consideration should be given to whether to lower the rate of public funding in making this change.

Funding by party group is the system used in the ACT which also uses Hare-Clark. The reason funding by candidate is a bad idea is that Hare-Clark involves competition between candidates within the same party, as well as across parties. Thus, the distribution of the vote among candidates within a party could determine whether the party receives public funding. An example in 2021 is the Greens' lead candidate for Lyons, who polled 4.06%, clearing the proposed funding threshold by 41 or 42 votes depending on rounding methods. The Greens would receive public funding for this candidate's votes but not for any other votes in Lyons – but had slightly more of their voters preferred another Greens candidate, they would get nothing. This places unfair pressure on voters to choose one candidate over another among their preferred party, because choosing the "wrong" candidate within a party could cause another candidate to miss the funding threshold, costing the party around $17,000.

A similar issue applies to major parties where voters have an incentive to spread their vote to get as many candidates over 4% as possible, but also an incentive to give as few votes as possible to candidates that are not going to get 4%. Voters and parties should not be lumbered with these strategic decisions, which may distort their natural choices and interfere with the competition on a level playing field that is appreciated within the Tasmanian system.

Another instructive example in Lyons 2021 is the Shooters, Fishers and Farmers. They got over 4% running a single candidate and would get public funding. Had they run two candidates, the split of votes between those candidates would deny them public funding. Possible unintended impacts of the proposed per-candidate model include:

- Incentivising minor parties to run fewer candidates, with risks of votes exhausting if voters only fill boxes for one party
- Incentivising parties, if they do run extra candidates with an eye to vacancies, to campaign as little for these candidates as possible in order to drive their vote down (in turn reducing voter knowledge of candidates)
- Encouraging non-serious candidates to flood ballots with the aim of driving disliked minor party candidates below the 4% primary target thereby denying them public funding
- Discouraging major parties from allowing serious competition between their candidates, in case this results in more votes going to candidates who do not reach 4%.

There is no reason for a per-candidate model to be adopted as a per-party model is already in use in the ACT.

Authorisation and Misleading Material

In general I am very impressed with the proposed reforms to authorisation and electoral material requirements, including (i) the exemption of personal views on social media (ii) more clarity regarding authorisation on social media (iii) the abandonment of unnecessary, vaguely defined and illiberal limits on naming candidates without consent in "notices" and "advertisements" (iv) and the level of detail involved in the new legislation regarding misleading electoral material.

One proposal that requires more thought is the proposed 197 (d) (Miscellaneous Amendments Bill) "could result in an elector casting an informal vote; or". I believe this should be amended by adding "unintentionally" after "elector", or in some way to achieve the same objective. In federal electoral law it is not an offence to encourage a voter to vote informally (as, for instance, Mark Latham did during the 2010 federal campaign) and in my view it should not be an offence as a matter of free speech. It is only a problem if someone encourages a voter to vote informally in a way that implies that such a vote will be formal.

Donations

I would personally prefer a threshold of $2000 for donations to be declared rather than $5000 – especially given that there will be public funding - but I recognise that such a threshold would be dependent on political will.

Informal Voting Reform

Mainly to correct a misrepresentation, I wish to note some disappointment that there is no progress towards savings provisions for unintentionally informal votes. The Final Report incorrectly summarised my views on this matter in the following text: "He noted however, that votes that would exhaust at a given stage are disproportionally targeted for exhaustion on surplus transfers. In other words there would be an increase in the number of exhausted votes." The latter does not necessarily follow from the former, is not what I said and is not necessarily my view. In the ACT, minor parties respond to the savings provisions by usually not running full slates of five candidates, since there is no reason to do so. This means minor party voters become more likely to give preferences rather than voting for their own party only and then stopping (as has especially often happened in Tasmania with populist parties like the Jacqui Lambie Network, Palmer United and Tasmania First). This acts to keep the exhaust rate down. In recent Tasmanian elections, the **effective** exhaust rate (ignoring mismeasuring resulting from the ACT running preference distributions further than necessary) in Tasmania in 2014 and 2018 was very similar to that in recent ACT elections. It was significantly lower in 2010 and 2021 only because those elections did not see many minor (non-Green) party full slates of candidates in Tasmania (in 2021 probably because it was a snap election and minor parties were less organised to run than they could have been). This is discussed further on my site at https://kevinbonham.blogspot.com/2020/02/unintended-informal-voting-in-tasmanian.html and https://kevinbonham.blogspot.com/2020/10/act-2020-final-results-review-how-did.html

5 pm Submission Deadlines

I wish to complain about the advertising of a 5 pm deadline for public comments on this legislation. It is now my standard practice, whenever a 5 pm deadline is advertised for public comment on anything, to complain about that deadline in my submission. I hope this will result in an end to 5 pm deadlines for public comments. There is no reason for a 5 pm deadline for public comments (are they really going to be processed after normal working hours on the day?). All such deadlines do is place further time pressure on already busy volunteers who write expert submissions for no financial return and who may also be working. It means if someone who is working hears about an issue they would like to make a submission on the final day, they have no time to do so. The deadline for public submissions should be simply given as the day in question, meaning that in theory submissions up to midnight meet the deadline.