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Department of Justice  
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20 July 2018

## **RE: Electoral Act Review**

On behalf of Tasmanian members of Civil Liberties Australia I would like to support the Government in its decision to specifically include freedom of speech in the terms of reference for this inquiry. However, we also recommend a more concrete definition of 'freedom of speech' be adopted for the purposes of the review.

Our experience of recent debates in Tasmania which touch on freedom of speech is that the various interested parties have adopted differing definitions or start from differing understandings of the concept. The result is that the discussion becomes confused without ever progressing to a more meaningful or productive discussion of the nuances that inevitably come with attempts to regulate in the area of free speech.

Two of the options available to the review for adoption are, firstly, the implied right to political communication in the Australian Constitution or, secondly, the freedom of expression as outlined in the International Covenant on Civil and Political Rights (ICCPR).

These two formulations of free speech have different meanings and scope. Depending on which is chosen as the definition of free speech, different conclusions might be reached on the issues being inquired into.

In our view, the better and more comprehensive approach is as outlined in the ICCPR at article 19. It is a better approach because the implied constitutional right to free political communication is narrower in that it:

1. Only applies to political speech, not all speech
2. Has, at times, been of limited application to State based laws with a preference for it to only apply to speech related to Federal Elections (for discussion, please see Professor Anne Twomey 'The Application of Implied Freedom of Political Communication To State Electoral Funding Laws' <http://www.austlii.edu.au/au/journals/UNSWLJ/2012/26.pdf>)

The implied constitutional right is also more difficult to comprehend as it is spread across multiple High Court judgments which are complex and voluminous.

By comparison, the ICCPR's statement of freedom of expression applies to all speech, is for the benefit of all people regardless of whether they are speaking about a State or Federal political issue and is presented in a more accessible and understandable format.

A further point the review should address is who has rights to freedom of speech – human beings alone or human beings and legal entities?

Our view is that freedom of expression is a human right relating to the fundamental dignity and worth of all human beings and, as such, is limited to benefiting human beings alone.

With the ICCPR in mind, we propose that the review acknowledge that a necessary precondition of free speech is the existence of meaningful and accurate information on which people can base their opinion or which may influence their opinion.

In the context of elections in Tasmania, we believe that access to information about who funds political parties will substantially add to the level of public discussion leading up to election day about political candidates and their policies.

Current Commonwealth laws do result in some donations in Tasmania disclosed, however this can occur many months after the election and Tasmania does not have any state-based disclosure laws. We make the point that while current Commonwealth laws do inherently acknowledge there is public interest in donations being made available, this disclosure occurs after votes are cast when any better informed discussion that results is not meaningful. Under the present system Tasmanians will wait until February 2019 until we are informed of who made what donations to whom in the lead up to the March 2018 election.

This support for the free flow of information as a necessary part of freedom of speech is discussed further in General Comment No 34 from the Human Rights Committee:

<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

Civil Liberties Australia therefore supports citizens being able to access real time information regarding the financial donations made to political parties.

Our proposal for consideration by the review is that to strengthen democracy and transparency in Tasmania political parties should be required to adopt real-time, on-line, continuous public disclosure of donations of \$1,000 or more - calculated cumulatively over a year.

The \$1,000 figure is proposed in recognition that, in addition to freedom of speech, rights to privacy for donors may also be a relevant human rights consideration. By establishing a clear dollar threshold above which donations must be declared 'mum and dad' donors who make relatively small contributions will be catered for. Also, the existence of a threshold gives donors choice and control over whether or not their identity is disclosed.

Thank you for this opportunity to contribute to the important review of our Electoral Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Griggs', followed by a period.

Richard Griggs - Tasmanian Director, Civil Liberties Australia