

## **Electoral Act Review –Interim Report – Comments**

There is a need to clearly delineate between content and any recommendations relating to candidates and political parties. Candidates stand for election and are elected. Political parties are private organisations which sponsor selected members with the aim of gaining control of the House of Assembly.

These are different and distinct entities and individual recommendations should be made for either candidates or political parties, not both together.

The report provides a lot of information about other jurisdiction but provides little or no arguments as to why the Tasmanian system has to be consistent to some other jurisdiction. Given the large amount of information about other jurisdiction, is this consistency an underlying principle for the review?

Despite the wealth of information about other jurisdictions there was little discussion of the direct and indirect impacts of possible changes on the Tasmanian electoral system. Will this be the next stage in the consultation process?

Much of this report is about the period between when an election is called and polling day. Some overlap with other times of the electoral cycle does occur. There is some change proposed to apply during an election campaign, but how the target of such changes 'behaves' outside this period is questionable. For example if a time period specified for political campaigners is restricted to an election campaign, these campaigners could focus their activities in the time period before an election is called. This has some risk with the Premier having the authority to call an election on a date of his or her choosing. This can be reduced through the political cycle and insider knowledge from the governing political party.

There is little discussion of how the impact or influence of a reviewed Electoral Act would have on other legislation and activities within the political bubble. How much overlap is there between the activities of a political campaigner and a lobbyist?

The following are comments on the Recommendation and Consultation Issues. Detailed comments on the Interim Report are not included.

**Recommendation 1: That a first tranche of amendments to the *Electoral Act 2004* be introduced in Parliament in early 2019, including:**

**Repeal of section 198(1)(b)(ii), i.e. the removal of the ban on newspaper commentary on Election Day.**

**Amendments to various timeframes in the Act to take account of longer or delayed postal delivery times, including: Section 126 (Application for postal vote) – move the deadline for receipt of all postal vote applications to 4pm on the eighth day before polling day.**

**Section 129 (Issue of replacement postal votes) – include a timeframe for applying for replacement voting material consistent with the proposed amendment to section 126, i.e. before 4pm on the eighth day before polling day.**

**Section 228 (How and when to nominate to contest recount) – extend the 10 day period for receipt of nominations to 14 days.**

**Part 5 Division 14 (Compulsory voting) – provide the Electoral Commissioner an additional period of time to issue follow up notices for failure to vote.**

**Section 70(1) (Polling Day) – extend the minimum period between nomination day and polling day from 15 days to 22 days.**

**An amendment to section 127 to allow postal vote information to be made available for viewing at the Tasmanian Electoral Commission Office.**

- I assume that this is meant to be plural unless the TEC has only one office. If only one office, people in other locations would be disadvantaged.

**Amendments to various provisions in the Act to replace references to ‘facsimile’ with ‘electronic means’.**

**Amendments to various provisions within Part 5 of the Act to enable the returning officer to delegate, in writing, a number of administrative duties to electoral officers.**

I assume that when the legislation states ‘in writing’, this is pen and ink not an email or similar. Given the more to include ‘electronic means’ in this and other legislation, the meaning of ‘in writing’ needs to be specified so any questioning of delegations is reduced.

- **An amendment to Schedule 2 Clause 6 of the Act to allow confirmation of out of session resolutions of the Tasmanian Electoral Commission to occur by electronic means rather than by the physical signing of a document.**

***These recommended amendments are contained in a draft consultation Bill – Electoral***

**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.**

The requirements for print media should not apply to the diversity of visual and audio material which include positive and negative posts on facebook and alike, serious, comical and satirical videos, podcasts, etc.

**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.**

Removing this restriction may be beneficial when applied to print media. Without this restriction there could be a proliferation of material for this or that candidate that is false or misleading. While all 'official' party material would be branded by party logos, etc. the use of look-alike symbols and similar would mislead voters.

The increased use of electronic media will create a proliferation of videos podcasts, infomercials and alike as well as a variety of political commentary. Removal of these restrictions may well increase the amount of questionable information circulating during an election campaign, creating a number of problems.

There is also the difficulty in policing such a restriction in the electronic world. Would Tasmanian law be applicable to material that is uploaded to a site based in Victoria or overseas?

**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.**

If a candidate or political party wants to spend money on election day that's their choice. The reason provided – the need for Tasmania to be consistent with other jurisdictions – is insufficient. If this consistency is an overarching principle governing the review this should be stated up front. It's application would suggest far greater changes to the current electoral system than those proposed.

**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.**

The definition of 'electoral matter' needs to be narrower and clearly defined. The common and highly questionable excuse of many in the political world of 'it's within the rules' has worn itself out. The listed electoral matters should strongly relate to those duties and responsibilities that underpin the one basic function or role of a member – representing the electorate. Electoral matters should be restricted to those matters specific to candidates. While political parties may have 'electoral matters', these parties are not standing for election.

**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.**

There is no disagreement with the thrust of the suggested change. However it is not clear what the *issues that could potentially arise in delaying the formation of a Government under the current Act where ballot papers are lost or destroyed* are. Just what are these issues and is the suggested change the best way to address them?

**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.**

The announcement of candidates, registration of political parties, declarations and acceptance of election writs should continue. Not all people have access to computers. If the publication requirement is broad where the Tasmanian Electoral Commission has a choice of media, with electronic media, there would have to be some guidance included as what platforms would be required – TEC homepage, parliament homepage, relevant members' and government ministers' home page, etc. and their associated social media outlets eg facebook.

Deciding where to electronic publish this information will be important. Many more people read the *Examiner*, *Advocate* or *Mercury* than visit the TEC's homepage.

The proposal is to reduce the cost of print publication but it maybe that the cost of electronic publication could be greater when on-costs are added up.

**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 following possible changes have been identified by the Review for consideration:**  
**Repeal section 52(6)(b) of the Act so the Tasmanian Electoral Commission is not required to provide a copy of the party register on request, but continue to provide that a copy is to be made available for public viewing, consistent with other Australian jurisdictions.**

**Amend section 44(1) of the Act to require an application for registration of a party to be accompanied by a copy of the party's constitution.**

**Consider whether any changes to the requirements under section 44(3) of the Act in relation to statutory declarations by members of a registering party may be required.**

The Interim Report does not give any indication as to the number of requests for party registrations (assuming these are for printed copies). Thus it is hard to determine just what an onerous task section 52 (6) is. If this change is made, just where will the registration be made available for public viewing? Will they be in every Service Tasmania office on display over the year? While they just be accessible through the TEC website and Hobart Office?

Again, the Interim Report does not provide adequate argument (as versus information) as to why the Tasmanian system has to be consistent with other Australian jurisdictions.

It is unclear why an application to register a political party has to include a copy of that party's constitution. If there is such a requirement, then the Act should be changed to include those matters to be included in a constitution. This may be a set of model rules. Also it is not clear if the

quality and content of a party's constitution will influence that party's registration. Is a one-page constitution acceptable? If the TEC has some minimal requirement for a constitution, the additional question is 'If this is required at registration, will the political party be required to inform the TEC of any changes to its constitution?'

The statutory declarations by members could be replaced with a statutory declaration by an officer of the party that the Act's current requirements are met. This places the onus and task in the hands of the party. As a precaution, provisions for an external audit could be included

**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.**

While the example of Antarctica lends support to the change, it is not clear why pre-poll ballots from Melbourne would need to be reclassified. On the other hand, the simpler the system the better – one class is simpler than two or more.

**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.**

Sections 100 and 102 should be consistent

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

If such an amendment is made, the criteria for treated current informal votes as formal need to be clear, specific and transparent. If this is not done, candidates that lose by a small number of votes could resort to the legal system. This could cause significant delays in determining the elected candidates.

This information should be included on ballot papers so as not to deny those people who wish to vote informal vote an opportunity to do so. An informal vote is a valid action similar to a member of the House of Assembly abstaining from voting or not being present when a vote occurs.

**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.**

Both these sections refer to a 'person'. As there is no definition of this term, do these sections cover an organisation including political parties?

While these sections should be consistent and enforceable, it would be beneficial to have these provisions supported by truth-in-advertising provisions for election campaigns

**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?**

The membership of these two groups should be different. Also the membership currently consisting of public servants (and the nominees) should be expanded to include people from outside the 'election or political bubble'. A view of a person or persons from outside this bubble would be beneficial as that person(s) would question the 'public service group think' of the current membership.

**Consultation Issue 13: If state-based disclosure rules are to be introduced in Tasmania, that consideration should be given to the following matters: 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.**

The act should define 'gift' and donation. This should include in-kind contributions (including an hourly rate for volunteers – this is similar to many application for grants etc.). In addition as the vast majority of candidates for election are sponsored by this or that political party, the term 'sponsorship' should be included and defined.

This definition should make be clear that sponsorship of candidates by political parties is or is not significantly different from sponsorship of candidates by non-political groups or individuals.

This definition should be specific enough to allow the relevant government agencies to administer so that the catchphrase – *it's within the rules* – becomes an invalid excuse for candidates, sitting members and their associated political parties.

Reporting should be in real time and publicly available. It is assumed that the candidates, especially sitting members, many supported by their respective organisations keep records of these matters in real time.

This would require the development and introduction of a real time information system by the TEC in conjunction with the parliament. While this initial cost may be considered large, there is an

increasing tendency for real time information systems eg *My Health Record*. It is likely that the cost of such a system will substantially more a decade or so down the track.

The question of thresholds can be answered in different ways. Is the threshold for total contributions from an individual? Does this consist of money and various in-kind contributions? Is it individual contributions at any time or over a set time frame? Thresholds will have to be set to make real time reporting practical but rigorous enough to make the information useful to the broader community.

It is assumed that a candidate (either directly or through his or her political party) is making real time records of gifts, donations, etc. Adding that information to a state based system would not be a great ask of a candidate. It would be an upfront 'cost' of being a candidate and if successful, a member. The main assumption here is that the candidates, members and political parties are keeping adequate records of these activities already.

Compliance would include the provision of audits where the office records are cross checked with uploaded information.

**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.**

Consideration of public funding of electoral expenditure raises the following points:

1. It must be remembered that candidates, not political parties stand for election. Therefore all public funding should be restricted to candidates. The idea that public funding should go to political parties is not supported.
- 2 Specific and equal amounts of public money should be allocated to each electorate. This would allow public funding of election spending to be a line item in the pre-election budget increasing transparency and accountability.
- 3 Reimbursement would be available from the allocated funds. The division would have an eligibility criterion (minimum number of votes to be eligible) with funds available up to a specified maximum. The amount of public funding paid to a candidate should not depend upon the number of primary votes received.
4. Amounts paid would be the amount spent up to the maximum amount. All applications would be made by candidates and supported by documentation.
- 5 The claiming of public funds by a candidates would be restricted to expenditure directly related to those matters defined as an 'electoral matter'.
5. If a candidate receives public monies, he or she can give this to his or her political party. This would be the candidate's choice and dependant upon the unwritten/unspoken agreement between the candidate and his or her political party. If such a transfer is made, the funds should be treated as a donation with the candidate and political party meeting any requirements in the Act.
6. If public funds are to be paid directly to a political party, then there should be corresponding public accountability and transparency including how such money is spent.

**Consultation Issue 15: Whether caps on electoral expenditure for candidates for the House of Assembly 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, if introduced.**

This is very open-ended. For example, if evidence from a new-state based disclosure regime is desired, the determination and introduction of a cap is many many years off. After the additional research, there is the introduction, a trial period including any amendments, a few of years for use before any trends can be confidently identified followed by the whole legislative process, if the political will exists, to introduce that cap.

If going to consider a cap, it is either done now based on current information and practices (but doesn't have to match another jurisdiction) or the current act be amended to require the Tasmanian Electoral Commission to introduce an electoral cap by a certain date. This date should be approximately midway between elections to allow political parties to plan their next electoral campaign.

**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.**

If candidates and political parties have a state-based disclosure regime, a third party disclosure regime for third parties is not required. In addition, there is the question of how a definition of 'gift' and 'donation' would apply to third parties. Many third parties receive donations that have nothing to do with the political system. If introduced will the regime relate to only those donations or that proportion of a donation relating to the political system? Will the Act have a schedule of prescribed third parties it or the government of the day decides is a 'political' third party?

The argument that one is driven elections and the other is driven by issues can be countered by arguing that political parties are driven by political philosophy and beliefs similar to third parties. It can also be argued that a number of candidates stand for election, recognising that he or she has little or no chance of election, to bring an issue to the public's attention.

**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.**

The definition of the term 'electoral activity' should be consistent with the definition of 'electoral matter'. If a broad definition is used, it should be qualified by the use of subsections listing specific categories of activity. This would make it clear what is considered an 'electoral activity' and reduce the use of *within the rules* excuses for activities the broader community would find questionable or unacceptable.

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

This term should be defined in the Act. If this definition includes any reference to individuals, then the definition should make a distinction between the campaigning activities of political parties versus the campaigning activities of their members. Just because a person is a member of



a political party should not mean that they are excluded from being identified as a political campaigner. This could also apply to the activities of factions within a political party.

Given that running an election campaign can be expensive, requiring political parties to raise funds, other organisations engaged in these fundraising activities can be considered political campaigners. This would include many of the 'associated entities'

If the emphasis on the legislation is to provide for and manage the election of candidates to a parliamentary seat, then it can be argued that political parties are political campaigners and these provisions would be applicable to these bodies.

There should be consistency between this Act and those covering lobbying, especially if any provisions are restricted to the period of an election campaign. Many lobbyists are political campaigners outside the election period.

What are the limits of 'political expenditure'? Is it direct expenditure (eg the cost of a ticket to an event) or indirect expenditure (eg a proportion of the cost of running an event in addition to the cost of a ticket)? In-kind contributions should be included but not used as a reason to have a high 'specified amount'.

Does the 'specified amount' should be low. While this may be considered restriction, such a restriction may force political parties to plan campaigns. The 'specified amount' should include in-kind contributions (eg the salaries of staff servicing an event or developing promotional materials)? Generally speaking what is included in 'political expenditure' should be consistent with what is included in the expenditure of others.

**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.**

All donations should be disclosed in real time. 'Donations' includes gifts, in-kind contributions and sponsorships as well as money. All individuals and groups making donations should be subject to the same rules.

**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.**

They should be regulated and have the same disclosure obligations.

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

Given that the timing of an election is a decision of the Premier, such provisions will be difficult. Either a third party campaigner will have to register many months out, risk the chance of being excluded or have only part of an electoral period to 'work' in.

Before registration is introduced, there should be some discussion of what information would be needed and why registration is needed by the TEC.

A requirement of a political party's constitution for registration is discussed earlier. Would a similar level of documentation be required? While such a requirement is introduced for organisations, what information would be required of individuals?

**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.**

This depends upon what information is collected by candidates and political parties at the time of donation. If adequate information is collected by the recipient at the time of donation (anonymous donations would not be allowed), disclosures by donors would not be required.

The recipient of the donation would be required to inform donors in writing of the recipient's reporting obligations.

There could be provision for an audit process which would apply to political donors.

**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.**

See comments on Consultation Issue 16 regarding timeframes. Given the ease with which a private organisation can be formed, placing a cap on third parties may lead to a proliferation of such entities. It is not that difficult to clone an organisation with a similar purpose to allow both to contribute, each under a cap where the initial organisation would be over that cap.

**Consultation Issue 19: That a prohibition on donations from certain parties not be considered in Tasmania at this stage.**

Subject to how well various bodies and their activities are defined and managed by any changes to the Act, no specific party should be prohibited. As with all these things, the devil is in the detail.

Graeme Lindsay

  
Deloraine 7304