

Office of the Secretary
Department of Justice
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By email: haveyoursay@justice.tas.gov.au

Dear Sir/Madam

LG Professionals Australia (Tasmania) represents the senior managers and professional officers working within local government across the state.

We appreciate the opportunity to make comment in response to the government's Review of the Tasmanian Electoral Act.

The Terms of Reference for this Review are:

- Modernising the current Tasmanian Electoral Act, with specific examination of sections including 191 (1) (b); 196 (1) and 198 (1) (b);
- Whether state-based disclosure rules should be introduced, and, if so, what they should include; and
- The level of regulation of third parties, including unions, during election campaigns.

We note that the Review will be guided by two governing principles: protecting freedom of speech, understanding relevant Constitutional implications; and ensuring that changes impose minimal cost on taxpayers.

Most of the matters covered in the specific Terms of Reference for this Review and, indeed in the Tasmanian Electoral Act, lie beyond the sphere of influence of local government officers. We have therefore limited our response to matters which impact directly on our members.

The Tasmanian Electoral Act 2004 is the key regulatory instrument governing election material. The Tasmanian Electoral Commission is recognised as the independent overseer of democratic voting processes and it has responsibility for most of the potential issues related to election material.

The only aspect of voting processes that does not fall under the remit of the Electoral Commission is that of election campaign signage. Instead, the Electoral Act makes it clear that signage for specific campaigns to promote the election of a candidate to office is regulated under local government planning schemes.

Local government planning schemes are the mechanism for regulation of land use and development in municipal areas, including associated signage. However, as signage for election purposes is not related to any planning development or use, this is not an easy fit.

This dichotomy creates confusion amongst candidates, and also the general public, who are often unaware of exactly where the responsibility for this regulation sits.

At present, local government planning schemes can vary greatly from one council to the next; which means interpretation of the regulations can also vary across council boundaries. This can create significant confusion in state and federal elections, where electorates often span more than one local government area. In these instances, candidates in one electorate may be faced with different interpretations of regulations in different local government areas. Election campaigns are fraught at the best of times, and apparent anomalies such as this can result in upset and rancour.

Having said that, the government has flagged the introduction of a state-wide signage code once interim local planning schemes under the State-wide planning provisions are finalised. In theory, this will overcome the matter of differing local planning schemes, though obviously the way in which this is enforced for election signage may well still vary across local government boundaries.

From a practical perspective, it is always difficult at a local government level to regulate these activities.

Council officers attempting to fulfil their duties in enforcing regulations related to election signage can be open to accusations of bias and favouritism. Many diverse interests are represented amongst elected Councillors and Aldermen, and they too can be accused of acting in a partisan manner.

As the recognised independent overseer of election-related matters, the Electoral Commission is less vulnerable to such risks.

This situation is further complicated in that the powers available to local government to address breaches of the planning scheme do not readily allow for non-compliant signage to be removed within a reasonable timeframe.

Some candidates are well aware of these constraints, and are prepared to game the system by assuming that councils are unlikely to issue or enforce infringement notices. On that basis, it is not unusual for candidates to erect non-compliant signage before the issuing of writs, or to leave signage in place until after the polling day, or to display signage which does not comply with other aspects of the Regulations.

Inspection and, where required, physical removal of signage requires redeployment of council officers from their usual operational duties. This inevitably imposes costs onto ratepayers for what is effectively the policing of election campaigns. This is not a role for which local government authorities are funded.

It is important to note that Division 4 of the Local Government (General) Regulations 2015 provides for electoral advertising - including signage - for local government elections. On that basis, we would argue that the Electoral Act could readily make the same provision for Tasmanian elections. This would obviate the need to use local planning schemes to regulate this form of signage.

Furthermore, section 177 of the Electoral Act relates to offences within 100 metres of a polling place. This can be interpreted to extend to the use of temporary (sandwich board) signage in the vicinity of polling places, including pre-poll polling places. The fact that the authority to regulate these areas is vested in the officer in charge of the polling place raises the possibility of overlap and conflicting directions.

It could also be argued that this provision indicates there is no need for council officers to use local by-laws or planning scheme provisions to control the use of election signage on footpaths in front of polling places.

In simple terms, then, we believe that election signage is an integral part of an election campaign and should therefore be regulated within the Electoral Act.

We would therefore suggest that, in this Review of the Act, consideration be given to moving responsibility for regulation of election signage from local government planning schemes to the Electoral Act.

We understand that the Local Government Association of Tasmania (LGAT) has made a similar recommendation in their submission to this Review. In our view, this greatly strengthens the argument in favour of this proposition.

The Association appreciates the opportunity to provide input into this process, and we would be pleased to provide further comment on any of the matters raised should that be required.

Yours sincerely,



Jan Davis
Chief Executive Officer

19th July 2018