# ELECTORAL ACT REVIEW

## Overview

On 3 May 2018, the Premier, Hon. Will Hodgman MP announced that the Government would conduct a review into Tasmania’s *Electoral Act* and associated election laws.

The Terms of Reference for the Review are:

1. Modernising the current Tasmanian *Electoral Act 2004* with specific examination of sections including 191(1)(b); 196(1) and 198(1)(b);
2. Whether state-based disclosure rules should be introduced, and, if so, what they should include; and
3. The level of regulation of third parties, including unions, during Election campaigns

The review will be guided by two governing principles; protecting freedom of speech, with note to Constitutional implications, and minimal cost to the taxpayer.

The recent State Election highlighted that some provisions in the Tasmanian *Electoral Act* and associated election laws have failed to keep pace with rapid changes in technology, social media and community expectations.

The Government recognises the importance of taking this opportunity to listen to all Tasmanians and ensure that we have a robust, democratic and fair electoral system that reflects Tasmania today.

The process will give every Tasmanian – political parties, organisations and the broader community – a chance to have their say. The review will receive written submissions from any person or group that wishes to have a say.

The review will commence with a call for public submissions on the terms of reference and targeted stakeholder consultation will also be undertaken. An interim report will be provided to the Government by the end of 2018, with a Final Report by mid-2019. The Government will then progress any legislative reforms to address recommendations arising from the Review.

## Terms of Reference

### 1. Modernising the current Tasmanian *Electoral Act* with specific examination of certain sections

The sections of the *Electoral Act* mentioned in the Terms of Reference are provided below.
There has been some criticism that these sections may not apply effectively to online communications and may require review in a digital age.

**Section 191**

*(1) Subject to sections 192, 193 and 194 a person must not, between the issue of the writ for an election and the close of poll at that election –*

*(a) print, publish, keep on display or distribute, or permit or authorise another person to print, publish, keep on display or distribute, any printed electoral matter without the name and address of the responsible person being printed, in legible characters, at the end of the electoral matter; or*

*(b) publish, or permit or authorise another person to publish, any electoral matter on the internet without the name and address of the responsible person appearing at the end of the electoral matter.*

*(2)  Printed electoral matter is published or kept on display by a person if the publication or display is published or kept on display with that person's consent.*

This provision ensures that all written material that deals with “electoral matters” is appropriately authorised. This ensures there is a nominated person that remains accountable for this material.

**Section 196**

*(1) A person must not between the issue of the writ for an election and the close of poll at that election 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 at that election without the written consent of the candidate.*

This provision prevents written advertising material that shows a candidate without that person’s permission. This provision was aimed at preventing defamatory and prejudicial material regarding a candidate.

**Section 198**

*(1) A person must not, on the polling day fixed for an election, or on a day to which the polling for an election has been adjourned –*

*(a) distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice containing any electoral matter; or*

*(b) publish or cause to be published in a newspaper –*

*(i) an advertisement for or on behalf of, or relating in any way to, a candidate or party; or*

*(ii) a matter or comment relating to a candidate or a question arising from, or an issue of, the election campaign.*

This provision prevents campaigning on Election Day. There is a blackout on all election advertisements in online and broadcast media through Schedule 2 of the *Broadcasting Services Act 1992 (Cth)*. Section 198 of the Tasmanian *Electoral Act 2004* has the additional effect of preventing commentary pieces in newspapers on Election Day.

### 2. Whether state based disclosure rules should be introduced, and, if so, what they should include

Currently disclosure of donations and gifts in Tasmania is governed by the Commonwealth *Electoral Act 1918*. Tasmania is the only Australian state that does not have state-based legislation regulating disclosure of gifts and donations to political parties.

In Tasmania, donations of $13,500 or more must be declared by the receiving party through an annual reporting process under the Commonwealth Act. However this reporting may not be due for over a year and does not take into account multiple donations from one source.

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

There has been increasing discussion both in Tasmania and in other jurisdictions about the activity and regulation of third parties during election campaigns. There is no regulation of the activity or expenditure of third parties, such as unions, representative bodies, lobby groups and corporate bodies, during election campaigns under Tasmanian law. There are varying levels of regulation of third parties in other States and Territories including disclosure and reporting requirements.

## What happens next?

The submissions received on the Terms of Reference will inform preparation of the Interim Report which will be provided to the Government by the end of 2018.

Following further targeted and public consultation on the Interim Report, a Final Report is expected to be provided in mid-2019.

The Government will then consult further on any proposed legislative reforms to address the recommendations arising from the review.