



**Liberal Party of Australia (Tasmanian Division)
Submission to the review of the
Tasmanian Electoral Act 2004**

Sam McQuestin – State Director

This submission is made on behalf of the Liberal Party of Australia (Tasmanian Division) not on behalf of the Tasmanian Government. Positions expressed in this document may or may not be consistent with the position of the Government.

This submission will principally be concerned term of reference three, deficiencies with the Electoral Act 2004. However with regard to the resourcing available to the Tasmanian Electoral Commission it is the Liberal Party's view that the Tasmanian Electoral Commission is sufficiently resourced to fulfill its current role.

The Liberal Party does not believe there has been an argument made for any substantial change to the Tasmanian Electoral Act 2004.

The previous State Government proposed considerable change to the funding and disclosure aspects of the Electoral Act in 2013. We opposed these changes. The Legislative Council ultimately also rejected these changes. We have included the Liberal Party's submission on these proposed changes with this submission for the committee's reference.

The one small area of the act that we believe should be considered for change is that of Party Registration. The Liberal Party does not believe that the current stipulation of 100 members is adequate to show evidence to the Commission of sufficient community support for a group to be registered as a political party in Tasmania.

Tasmania currently requires the lowest number of registered members of any State and has only half the requirement of the Northern Territory¹. It is the Liberal Party's view that this should be changed to be equal to the lowest number required in any mainland State, (200 in South Australia)^{2 3 4 5 6}. 200 people is better evidence of general support of an organization and therefore would be more appropriate than the current 100.

It has been reported in the media that the Labor Party will be submitting that the Commonwealth Electoral Act allows candidates to dodge disclosure obligations by accepting

¹ *Electoral Act 2004 (Northern Territory)*, s 152

² *Electoral Act 1985 (South Australia)*, s 39

³ *Parliamentary Electorates and Elections Act 1912 (NSW)*, s 66A

⁴ *Electoral Act 2002 (Victoria)*, s 45

⁵ *Electoral Act 1907 (Western Australia)*, s 62E

⁶ *Electoral Act 1992 (Queensland)*, s 71

donations directly. It is the Liberal Party's belief that to the extent this is a problem it is best dealt with by the Commonwealth Electoral Act. In any event as it stands this is currently handled by internal party processes. In fact this is not something that is permitted to occur by the Liberal Party currently. The Labor Party also claims that it does not allow this either. The Liberal Party is not aware of a single instance of this alleged problem and we would be interested in any evidence to support the Labor Party's claim. At present there is no evidence that this issue needs to be addressed by State based legislative means.



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Introduction:

The Liberal Party supports the current framework for Tasmanian Parliamentary donation, spending and disclosure laws.

There has been no evidence whatsoever presented that the current system is failing and needs change.

Strong and vibrant political parties are central to the stability and fairness of our electoral system, and weakening political parties through draconian regulation risks the rise of unregulated and less transparent third parties, which would be detrimental for our democracy.

As a matter of principle, the Liberal Party will not support any changes to the system which would discourage participation in the electoral process.

Nor will we support any changes to donation, spending and disclosure laws which would inevitably lead to increased litigation - a very unhealthy development for our democracy. Our elections should be decided in the ballot box, not the courtroom.

The simple fact is, this review process is nothing more than a flagrant attempt by Labor and the Greens to manipulate the system for their benefit, at a time of flagging popularity in the lead-up to an election.

It is notable that this review flags changes which have long been proposed by the Greens, and which were not supported by Labor prior to them forming a minority Government with the Greens following the 2010 state election.

The partisan political nature of these proposed changes is also evidenced by the fact that Labor and the Greens are already seeking to manipulate donation laws to their benefit, by proposing to ban donations from tobacco companies, separate to this review.

No case has been made for why donations from one legal product should be banned, but others not – for example, why no ban on alcohol, or gaming, or fast foods, which also have negative health and social effects?

Truth be told, most if not all of the proposed changes in the discussion paper are designed to benefit Labor and the Greens, by curbing the fund-raising capacity of the Liberal Party, but not significantly affecting the capacity of Labor and the Greens to raise funds

For example, union fees and donations would not be affected under the proposed changes; while significantly lowering the disclosure threshold as has been mooted would also advantage Labor and the Greens – not only do they generally rely less on larger non-union donations, there is much anecdotal evidence of individuals being targeted if it is known that they have donated to us.

As for the spending cap proposal, this would serve only to advantage incumbents, and in the Hare-Clarke system, high profile and “name” candidates – which is not good for the plurality of a healthy democracy.

In short, there is no evidence of problems with the present system, there has not been any case made to change the status quo, and attempts to do so are nothing more than a naked attempt by Labor and the Greens to gain partisan political advantage.

If you really believed the current system was broken (which we don't), and proposed a new system which severely restricts the fundraising activities of political parties, the only way to ensure fairness would be to also put in place a system of public funding. Based on current levels of activity of all political parties, we estimate this would be in excess of \$12 million over the forward estimates.

Given the fact that the budget is a wreck due to Labor and the Greens' mismanagement, this is clearly not affordable, and is not supported by the Liberal Party.

1. Should there be any restrictions on who may donate to a political party or candidate for a Tasmanian parliamentary election?

The Liberal Party believes that any person or entity who conducts a legal business should be able to participate in the democratic process by making a donation.

Interestingly then Attorney General David Bartlett agreed with this principle during a discussion on the matter in Parliament. In Hansard 5th of April 2011 Mr Bartlett said;

“it is a very difficult arbitrary line to draw and therefore the only non-arbitrary line in this debate is what is legal. If it is legal to run a business to make a profit, why would it not be just as legal for someone who makes a profit out of selling McDonald's burgers as tobacco to make a donation in a democracy?”

We believe that the suggestion that some industries are less worthy of an opportunity to participate in this process is nothing more than the Labor and Greens parties seeking to remove sources of support from their political opponents based on self-interested ideological motivations. For example, political donations from liquor and gaming companies are approved of by the Labor party, whilst donations from tobacco companies are not.

Furthermore, in other jurisdictions where bans on specific industries have been put in place there has been a systematic abuse of the democratic process, most recently in NSW by members of the Labor Party. There is no evidence to suggest this is the case in Tasmania.

2. How much should donors be able to give?

The Liberal Party does not believe there should be a limit on the amount of support able to be given to any political party. Individuals and entities wishing to participate in the political process should be free to contribute, within the existing law, up to whatever limit they feel is appropriate. The desire to put a limit on the amount that can be contributed is simply an attempt by left leaning parties to impose a socialist model to limit the ability of their political opponents to run effective campaigns, while not affecting their own sources of income to the same extent. It has been noted that the Greens hypocritically accepted the largest donation in Australian political history of \$1.6 million, whilst still condemning the practice of accepting donations.

3. Should donations be made public?

Notwithstanding anecdotal evidence that the Labor and Greens parties have in the past targeted people who have contributed to their political opponents, the Liberal Party is supportive of the current legal frame-work which applies federally. As a consequence the Liberal Party is committed to disclosure at the current level in the time frame currently stipulated, including the maintenance of a non-disclosure regime for smaller donations below the current threshold. Recent examples of the Greens and their allies targeting the customers of legal businesses for political reasons is an example of what they would likely also do to financial donors to their opponents. This would rightly scare off ordinary small business people from making small donations if they were to be disclosed. Our democratic system relies on the principle of the secret ballot to avoid the opportunity for political intimidation in expressing one's political views.

Given the disproportionately large size of government as a proportion of the Tasmanian economy, there is an increased risk of an incumbent government penalising financial supporters of their opponents through loss of government work.

4. Should the behaviour of other organisations be regulated during an election campaign? What sort of controls?

The Liberal Party opposes any change to the present legal frame work as it applies to the Tasmanian Parliamentary elections donations and spending. However in the event that changes are made it is important that even more stringent regulations be placed on third parties, particularly unions, web based activist groups and environmental organisations, to ensure that our democratic system is not subverted or open to manipulation.

To ensure that political parties are not weakened in comparison to third party actors the following would need to be considered;

- regulating third parties over the same or longer period as political parties;
- any changes to donations or disclosure to also apply to third parties;

- more stringent controls on third party spending; limiting spending allowed by third parties to a small proportion of that allowed by political parties;
- so as to not undermine political parties, which should rightly be the dominant actors in an election campaign, stringent regulation of ‘in kind’ support provided by unions and environmental organisations to avoid subversion of the system.

In systems where new regulations are placed on political parties an unhealthy proliferation of third parties that can be damaging to the democratic system is often observed.

5. Should there be caps on spending on elections?

The Liberal Party believes that there should be no limit on the spending allowed during or in the lead up to lower house election campaigns. Limits on spending in lower house elections have, in the past, resulted in litigation and disputes over the result of elections. This is exacerbated by the extremely competitive nature of the Hare-Clarke system leading to considerable cost to the candidates and to the Electoral Commission. Further, legal action as a result of election spending disputes will lead to uncertainty and further extend the period before a final election result is known and a Government is formed. This would be further damaging to the Tasmanian economy. Limits on spending have been in place in the Tasmanian jurisdiction for lower house elections in the past and were removed as a result of legal action. This occurred in the 1979 Tasmanian State election and led to a by-election in the division of Denison in 1980.

If five thousand people wish to donate \$40 each to a candidate why shouldn't the candidate be able to spend \$200,000 on their campaign even though this is a considerable sum? Surely it is a strong indicator of the grass roots popularity of the candidate.

The present Hare-Clarke system already significantly advantages incumbent members of parliament. Any cap on candidate spending will further undemocratically entrench an incumbent member's advantage. Arguably the minister pursuing these reforms has a conflict of interest in changing the rules to tip the balance further in favour of an incumbent member.

Spending caps on candidates inevitably leads to the proliferation of front groups and “dummy candidates” that are less transparent for democracy.

6. Should candidates for elections to the Tasmanian Parliament be required to declare the donations they receive? Should there be any exceptions?

The Liberal Party supports the current legal framework including disclosure laws as they are in place at a federal level. The level of disclosure required is appropriate as is the time frame in which this disclosure is required.

7. What level should a donor be allowed to remain anonymous?

The Liberal Party believes the current disclosure levels are appropriate. It would be a severe administrative burden and invasion of privacy for people making small donations, including the purchasing of raffle tickets and the attending barbeques and the like to be caught up in the administration of a draconian disclosure regime.

Small scale events and raffles are generally run by our rank and file branch members and volunteers. It would be akin to using a sledge hammer to crack a nut to impose penalties against well-meaning branch members acting in a volunteer capacity who inadvertently fail to record the name and address of every person who buys tickets in a raffle or attends an event such as a barbeque.

This is taking bureaucratic red tape to the extreme and would be a strong disincentive for people to volunteer to assist in conducting small scale community social events as well as being a disincentive for people to attend for fear of their private details being recorded.

8. Should political parties be required to declare donations they receive at any time or only during election campaigns?

The current legal frame work including the AEC rules on annual disclosure are appropriate. The Liberal Party supports a continuation of annual reporting to the AEC of all donations over the level stipulated in the time frame required.

Any variation from these arrangements would involve a large administrative burden on all participants in the political process, increase the administrative burden on the Tasmanian Electoral Commission and require additional staff and resources – for no practical benefit. In addition at a time when the Labor/Green Government is claiming economic hardship and is cutting essential services the Liberal Party would not see this as a spending priority.

9. How quickly should a candidate, political party or donor be required to disclose a donation?

In order to remain in line with the Australian Electoral Commission requirements the Liberal Party believes that it is entirely appropriate for returns to be lodged in October following the end of a financial year and the publication of the declarations be maintained at the 1st of February following the end of that financial year.

Any variation from the practice at a federal level would impose a significant administrative burden on political parties as well as involving the Tasmanian Electoral Commission in additional expense at a time that the Tasmanian budget can ill afford it.

10. Should public funding be provided to political parties and candidates?

If any changes are made to the private funding of political parties, as proposed by this reform, then public funding would also need to be provided for the administration of political parties. This would significantly increase the burden on taxpayers costing, we estimate, in excess of \$12 million over the forward estimates.

The Liberal Party does not believe this is affordable in the present circumstances nor does it believe the Tasmanian community would support this. Therefore the status quo with private funding should remain so as to not burden tax payers at a time when the State budget can least afford it.

11. In the event of a change to the system what penalties should be considered?

The Tasmanian Division of the Liberal Party is opposed to any change to the current legal framework in this regard; consequently we do not see a need for any changes to the current system of penalties.

In the event that changes were made the penalties would need to be weighted in such a way as to be taken seriously enough so that penalties are not ignored whilst not making penalties so severe that litigation and dispute become substantial features of the system. In systems where donations and spending are regulated increased litigation inevitably follows and such a development would be a very unhealthy change to our democratic system and in itself is reason enough not to impose further regulation on the status quo.

Our elections are better settled in the ballot box rather than the court room. If changes are made, penalties should also apply to 3rd parties in a manner which is at least as severe as the penalties to political parties or candidates.

Conclusion:

As explained at the outset the Liberal Party opposes changes to the current framework for Tasmanian Parliamentary Elections Political Donations and Spending. This review process may be seen as an attempt to manipulate the system for their benefit of the Labor/Green Government at the time of flagging popularity in the lead up to an election.

Excessive regulation and increased litigation flowing from changes to the present system would be a very unhealthy development in Tasmania's democratic system.

Strong and vibrant political parties are central to the stability and fairness of our electoral system weakening political parties through draconian regulation risks less transparent third party organisations gaining unhealthy influence detrimental to our democracy.

In conclusion the Liberal Party does not support imposing changes that discourage participation in the democratic political process. As a matter of principle and political fairness any changes to the conduct of Tasmanian elections, political donations and spending should be done following thorough consultation and wherever possible agreement between the parties so that it is not an attempt to politically disadvantage any side of politics.

Finally there is no evidence of any problems with the existing system in Tasmania and there has not been a case made for any change to the status quo.