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Parliamentary Support Officer: Legislation and Engagement
House of Assembly
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Dear Mr Charles

**Inquiry into Joint Standing Committee on Electoral Matters' Inquiry
into the Electoral Amendment Bill 2024 (No. 25 of 2024).**

Thank you for the opportunity to make a submission to this inquiry. This submission deals with:

1. Context
2. The Tasmanian Constitution Society's position.
3. Truth in Political Advertising

1. Context

The bill's intention is to amend Section 196 of the Electoral Act 2004 to align Tasmania with Australia's other jurisdictions by removing the reference to the prohibition of publishing or distributing content during an election campaign that includes the name, photograph or a likeness of a candidate, or intending candidate, at that election without their written consent. But it would retain these requirements for "How To Vote" cards.

The argument for can be summarised:

- Tasmania is the only Australian jurisdiction to have the prohibition
- The Section is dated, first introduced in 1921 and expanded in 1985 when the prohibition was extended to the use of a photograph or likeness of a candidate.
- The original reason for the restriction "has been lost over time".
- The Tasmanian Electoral Commission has acknowledged candidates' potential concerns about the publication of inaccurate information if the clause was changed but there were sufficient protections against abuse.
- Complaints investigation takes up Electoral Commission time.

The argument against can be summarised:

- Section 196 as it is, protects candidates and democracy. That protection includes the abuse of Artificial Intelligence in words and pictures.
- Voters know the truth of campaign information can be tested, which is a fundamental requirement of democracy.
- The bill should be part of a suite of reforms: truth in advertising, spending caps, public funding.
- Candidates have recourse to defamation laws but if it happens in the last week or so of a campaign, there is insufficient time to take legal action to correct the record.

2. The Tasmanian Constitution Society's position

The Tasmanian Constitution Society supports the bill on the grounds that the reasons for retaining it do not outweigh those for not retaining it.

Retention is not a remedy. The misuse, abuse and deliberate lying about a candidate and/or their policies has escalated in the past few decades and has been exacerbated by the proliferation of Artificial Intelligence and its potential to create audio visual content that is false but appears true. The retention of Section 196 will not stop it. Truth in Advertising legislation would provide a stronger protection, and although it would not eliminate all abuse, at least some protection would be provided.

Inconsistency in application. A measure of a law's effectiveness is its enforceability and fairness. Section 196, as it is, does not fulfil that requirement. Ms O'Connor gave two examples in the Second Reading debate of where she had been inadvertently in breach of Section 196 which caused considerable distress. It seems the law's application depends on vexatious actors who complain to the Electoral Commission. There would have been countless other similar breaches that did not attract the Tasmanian Electoral Commission's attention because a complaint was not lodged. I have been unable to ascertain how many successful prosecutions the Commission has made in the past 20 years, but when a complaint is made, resources are taken from other tasks that could be arguably more productive.

Free speech. Fear of prosecution could deter election campaign actors from engaging in the election campaign debate in a meaningful and responsible way.

Strong support for change. A strong argument for the bill is the three political parties and the Tasmanian Law Reform Institute support change and no other Australian jurisdiction has similar legislation.

Truth in political advertising

Many sources have well documented the increase in prevalence of deliberate false and misleading information, particularly online, here and overseas. It would be naïve to believe truth in political advertising laws would eliminate it, but it could reduce it. The Susan McKinnon Foundation last year, with Monash University, researched the "effect, operation, and administration of truth in political advertising laws" especially in South Australia and with reference to New South Wales and Victoria. There was "general support" for the introduction of the laws.ⁱ

Tasmanians support truth in political advertising laws. An Australia Institute opinion poll in April 2021 found 87 percent of those Tasmanians polled wanted laws that made it illegal for political parties and candidates to publish advertising that was inaccurate and misleading. South Australia has had truth in advertising laws for nearly four decades and similar laws were recently proclaimed in the Australian Capital Territory.

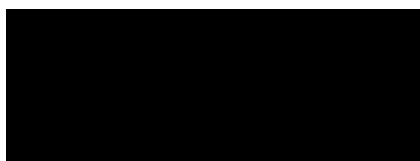
The Tasmanian Constitution Society supports truth in political advertising laws in principle because it would:

1. Reduce instances of false or misleading statements in political advertising. Many sources have well documented the increase in prevalence of deliberate false and misleading information, particularly online, here and overseas. It would strengthen the nexus between truth and trust that underpins the contract between voters and their elected representatives. It would improve people's flagging confidence in the political process and elections.
2. Potentially deter bad actors and improve the quality of public information.

In the past decade or so, in Tasmania and elsewhere, there has been the deliberate and systematic propagation of misleading and untrue information. The Liberal party's replication of the Jacqui Lambie Network website in last year's House of Assembly election is an example. The intention was not to inform but to mislead. Another local example was from the 2018 election campaign when a Liberal staffer was dismissed for using a fake social media account.ⁱⁱ In both cases, Section 196 was not activated.

The Electoral Act (2004) should be amended to include truth in political advertising laws and could be administered by the Electoral Commission. This would require extra staff but, going by the South Australian example, it need not be a large number. The Electoral Commission of South Australia has five positions to deal with election complaints and less than half were about misleading advertisingⁱⁱⁱ.

Yours faithfully



Neil Spark
President

Endnotes

ⁱ *Truth in Political Advertising' Laws: Operation and Effectiveness. Interim Report, 2024.*
<https://www.susanmckinnon.org.au/research-resources/truth-in-political-advertising-laws-operation-and-effectiveness>.
Accessed 24 January 2025.

ⁱⁱ ABC News report *Senior Liberal Staffer Martine Haley Resigns After Election Trolling*
<https://www.abc.net.au/news/2018-03-06/liberal-staffer-martine-haley-resigns-over-trolling/9518156> (Accessed 14 September 2024)

ⁱⁱⁱ Australia Institute *The Case For Truth In Political Advertising Reform In Tasmania* https://australiainstitute.org.au/wp-content/uploads/2022/11/P1339-The-case-for-truth-in-political-advertising-laws-in-Tasmania-Web.pdf?utm_source=pocket_saves (Accessed 14 September 2024)