

# PUBLIC

**THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, ON WEDNESDAY 12 FEBRUARY 2024.**

## **INQUIRY INTO THE CONDUCT OF THE 2024 HOA GENERAL AND LC PERIODIC ELECTIONS**

**The committee met at 1.00 p.m.**

**CHAIR** (Ms Webb) - This is the Joint Standing Committee on Electoral Matters. We have a public hearing as part of our inquiry into the 2024 House of Assembly general election and 2024 Legislative Council Elections. Thank you for joining us today, Will, from elsewhere. I'm going to make this statement before we start and get you to swear in in a moment.

Before you begin giving your evidence, I'd like to ask whether you've received and read the guide sent to you by the committee secretary. If so, I would like to reiterate some of the aspects of that document. This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to your statements that may be defamatory, are repeated or referred to by you outside the parliamentary proceedings.

This is a public hearing. Members of the public and journalists may be present and this means your evidence may be reported. It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand?

**Mr COATS** - Yes, I do. And I have read the document.

**CHAIR** - In a minute I'll ask you to make the declaration. Before I do, I should have also introduced you to the members of the committee who are here. We have the member for Mersey, Mike Gaffney; the member for Clark, Kristie Johnston; the member for Hobart, Cassy O'Connor; and me, Meg Webb, the member for Nelson. We also have Fiona assisting from the secretariat and Lesley from Hansard today.

Because you're online, we're going to do the swearing in with you. Please introduce yourself first, stating your name, title and organisation if applicable.

**Mr COATS** - Yes, that's fine. William Coats, in a personal capacity. I'm not representing any organisation, but I'm happy to have a note and it's noted in my submission that I am a Councillor of the City of Hobart.

**Mr WILL COATS** WAS CALLED, MADE THE STATUTORY DECLARATION, AND WAS EXAMINED.

**CHAIR** - Thanks for your submission to the inquiry, Will. It was a considered one, I thought, and had lots of useful matters for us to consider. I really appreciate the time you took to make this submission. There are a few issues you raised, and no doubt we might have some questions about a range of them.

The first one I thought was an interesting one was around the move to more people early through pre-polling and your concern there. Did you want to add some further thoughts around that? I think you've indicated some concern, but I wonder whether you have specific ideas about what would be an appropriate way to approach that if we were to think about how we might curtail it or readjust it somewhat?

**Mr COATS** - I'll speak to that point first, but very quickly before I do, as you all are aware and I'm aware, this is the first sort of Electoral Matters Committee. I know Kevin Bonham's been talking for ages about having one for Tasmania and for all elections. I guess my submission was - part of it was more general commentary on elections and what seems to be happening, and ultimately just discussion points. I've picked a few issues to put some thoughts to paper, but happy to sort of talk broadly.

When it comes to early voting, it's one of these things where I think the intent is good. We want more people to vote. I think elections where if you're having a compulsory election environment where we can get up around 90 or higher participation rate is a really good thing. I think from a policy perspective, you want to know that the person who ultimately is elected was actually elected by the constituencies there that they represent.

I think you do start getting into issues where there's low turnout, people get in and they might only get in by a few per cent, but you look and you're only getting 70 or 80 per cent turnout. The by-elections on the weekend in Victoria, I think Werribee's reported as getting to about 70 per cent turn out. Tasmania, because it's a small community, we get pretty high, I think. Albeit, obviously, Legislative Council elections, people just aren't as aware and they're not as well-advertised.

What's happened is you've had this policy push to make it easier to vote. The way that's happened is it seems to be longer and longer, and of course COVID was a unique circumstance, but they've sort of extended the timeframe a lot. But if you think about it, an election is taking the pulse of the community, of the electorate at a certain point in time, with access to certain information with an understanding as a campaign where the candidates have to provide their policies and ideas and present who they are to their community. If you move away from an election date towards a sort of election period, I think that does have some negative impacts.

I've spoken a little bit in there, but it was my experience where you start talking to people and then you find out they've already voted. You get this weird thing now where because you need to fill up the media time and cycle and have fresh things to talk about, you're getting announcements about policies, but a chunk of the electorate's already voted. I do think there's that natural balance between an informed voter versus just someone who has voted. If it was all about getting participation up to 100 per cent, you'd have a six month election, like, you can vote at any time between now and when it's due and just do it that way. I think there are benefits.

I guess when it comes to specific recommendations, I've sort of made the observation as an enforcement measure, fines generally work. Most people want to avoid a fine, so they'll bother to vote. Obviously, they're not perfect, and part of it is more about the messaging. If you honestly said, 'There's going to be one person every year who doesn't vote that ends up having to do a day of community service', that can be a powerful message to make sure people vote. If it's all pointed towards a single election day and if you make that election day, there's lots of polling places at 7.30 a.m. to 7.30 p.m. - I think was one of my recommendations, slightly extend it - and really do push that election day sort of message.

I could see the TEC doing a negative message around, 'There are severe consequences, it's a public duty, you must vote', and then a positive message around, 'It's national get an election sausage day', or something. Between those two, you'll probably get 95 per cent turn out, hopefully.

Dealing with things like mobile offices, postal, people who genuinely can't vote on the day - I think you need to have avenues for those to vote. As a comment, and I'll have to look back at the stats, but the areas where the pre-poll is more convenient have a far more likely chance of people pre-poll voting, even in scenarios where you're only really meant to pre-poll if you can't vote on a day. Clearly, it's just a matter of convenience, and frankly, people get disenfranchised. Four days before the election costings come out or policy comes out, but if you've already cast your vote, you are actually disenfranchised. You no longer have that ability to make an informed decision, change your mind. I guess that part of my submission speaks to those issues.

To be fair, there's no perfect outcome. I'm just observing that there is a trend towards more and more pre-poll voting. I think that does actually have an impact in terms of that policy intent of getting an informed vote, and the decision by the community in a single point of time with consistent information. I'm interested if there's any further questions on that one.

**CHAIR** - I think we've got some follow-up questions. Thanks for that, Will.

**Mr GAFFNEY** - I'm interested in the one about taking away people's right to vote early because of policy announcements and that sort of thing, Will. Do you think there would be any sense in saying perhaps one week before an election date, parties are not allowed to then announce any other funding or policy measures and stuff, so that the cut-off date for the discerning voter regarding that - because there seems to be a bit of pork-barrelling in that last week before an election. You would put the shoe on the other foot and say, 'Parties, one week before election, you can't do any more policy announcements or funding announcements'. Do you see what I mean?

**Mr COATS** - No. I mean, I understand where the intent of that, to do it the other way around might come from, but I think in a practical sense, groups would be releasing *Encyclopaedia Britannica* levels of policy, but then they'd only be advertising them in that last week. Also, you'd then get into the argument about what is an announcement of a policy versus what's talking about something. You'd also get - there are other scenarios where, fair enough, groups want to respond.

If you had a cut-off a week out, you, as a candidate, to use you as an example, let's say you're running in Mersey and you had a whole host of people running against you. People might put out policies on the final day where they're allowed to, but then you actually want to be able to respond with your own. They might put out a policy talking about fish in the Mersey River. Then you wouldn't want a scenario where you as a candidate then are precluded from actually putting out something and talking and responding. I think that just is a little bit too difficult. In some ways, the media blackout - I think it used to be 48 hours before - does that to an extent because parties are less likely to announce something the day before an election if there's a media blackout.

In the world now where you've got social media and you've got that direct contact, like, someone asks you a question legitimately as a constituent who is going to be voting and you

want to respond and talk about your policy ideas to the questions they've raised. At what point does that veer into you talking about what you do and that being a policy?

The reality is that in an election campaign, you might only be able to release 10 or 20 headline policies. If someone wants to talk to you about a specific issue in their suburb and you want to respond with an idea, it does get a bit messy. I can understand the trust of managing it on that perspective. That would support, you know, there's an election week and you've got to have all your stuff out before that week, but I think you have a day for a reason.

**CHAIR** - Okay, thank you. Before I pass to Cassy, I have to point out, at the beginning, I didn't introduce our member who's online for this hearing, Simon Wood, Liberal member for Bass. Sorry, Simon, My deepest apologies. It was me being a bit scrappy at the start.

**Mr WOOD** - No problem at all, Meg. Thank you.

**Ms O'CONNOR** - Thanks, Will. I agree, it's a thoughtful submission. I guess at one level I really hear your frustration about early voting. Having just not long ago been through the Hobart campaign, the number of people who you couldn't have a persuasive conversation with because their vote had already been cast.

I wanted to explore with you the fine line between dealing with that frustration and making sure we're not suppressing votes in some way. As I understand it, the reason that the pre-poll period is as long as it is, is in order to make it easy to vote. I'm not sure what the problem is with making it easier for people to vote, is the first question to you. The second one is why would you completely remove pre-poll? Isn't there a capacity here to shorten it a bit as a recommendation rather than just getting rid of it completely?

**Mr COATS** - Yes. I'll deal with both questions separately or whether they're sort of related. The first one, there's a natural difference between voting in terms of purely driving up participation and ensuring that those who do participate are best informed as possible. I guess there is always going to be a trade-off. If you make voting early accessible, then there will be people that cast votes early who don't then have the opportunity to change their vote given subsequent information. The classic example is you get people who vote, costings or policies get released, which then gets scrutinised, scrutinised by other candidates, scrutinised by the media, scrutinised by other commentariat. Those people have now been disenfranchised from being able to change their vote. Potentially, you get a scenario where an event happens or something happens that's relevant to that person, but they're no longer empowered.

You can argue where you draw the line. I'm arguing that actually you should just have an election day and not have pre-poll, or limit pre-poll genuinely to those who can't vote on the day - interstate, postal, et cetera. You could have a line one week, two weeks, 10 weeks out, but there is always that trade-off. You're never going to get 100 per cent participation. Of course, people are informed when they're voting only to a certain extent, but by definition, if someone casts a vote two weeks before the election day, they will not be as informed potentially as someone who votes on election day. There can be events, policies, activities.

That's the public policy question, I guess. I'm not suggesting there's a right or wrong answer. I'm just highlighting it as a natural discussion point coming out of what has been a trend towards more and more pre-poll, both in terms of duration of pre-poll, but also the numbers that avail themselves of that opportunity.

The second one, I think you mentioned why is it that we need a single day? I think that comes to actually improving turnout. I think if there is a single day and the messaging is really clear that in Australia we have compulsory voting, it is a civic duty, it's not a voluntary activity, it's not something you like to do, it's actually something most people don't like to do, but whether you like it or not, you have to make a choice about who represents you. I think having a single election day actually helps that message cut through and the community is more aware of it. If every single person on a certain day has to go into a certain activity, everyone becomes aware of it and across it. Whereas I think sometimes, by having a sort of election period that seems to be creeping in, that takes it away.

I'm not too fussed if you guys come back and say we recommend a week or two weeks or whatever, but from my point of view I think you could have a very good healthy turnout by still having a single election day, provided the messaging around that election day and potentially some of the enforcement measures were well-targeted.

It's one of these areas you're going to have to draw a line somewhere. I would argue that you can go back to having a single election day, but ultimately the policy is a difference between purely driving turnout versus the natural trade-off with information and informed votes.

**Ms O'CONNOR** - I guess the thing is, Will, that when you talk about a single day for an election, it does sound a bit Trumpian. That is what the Republicans in the US have argued for. Their motivations obviously are not the same as yours because you embrace participation, but the notion that you'd restrict voting other than in exceptional circumstances and potentially make it difficult for people to vote outside voting day is something that conservative parties who have a habit of trying to suppress votes are pushing. Do you have a response to that?

**Mr COATS** - Two things - one, a compulsory election system is very different to a non-compulsory. Obviously, the US is strange because for historic reasons they hold their elections on Tuesday as well.

I think there's ways around policies around the TEC, both proactive in terms of advertising and also deterrent measures in terms of, 'These are the punishments if you don't vote', is one factor. The other one of course is there's a natural observation that can be made where if you have, rather than, at the moment I think it's 70 to 60 per cent or something vote on election day, you can only stand up so many polling booths. If all your resources are spent on the one day, potentially you can actually have more polling booths available rather than having to sort of staff all these ones for two or three weeks. I think in terms of making it accessible, that is definitely a policy consideration.

The last thing you want is someone who found themselves unable to vote. That's not a good outcome, but my observation and argument is we do need to be ensured that people are informed when they're voting.

A classic example, I think a few years ago, when they had the Legislative Council election on the same day and people went to a polling booth that wasn't accredited. You know, in Launceston they were voting, thinking they were voting in Rosevears or Windermere or whatever it was. But they went to a polling booth down at Kings Meadows and found themselves unable to vote. That's a terrible outcome because that's someone who it's not accessible.

I can understand that the amount of conversation and media we get bleeding out of the US, but I think the US is some different issues. I think there's other policy levers you can pull around that concern about this being a way of sort of suppressing votes. I don't think it's a sort of suppressing votes and target. It's a public policy question. Is the goal to get to 100 per cent turnout, or is the goal to get to 95 per cent turnout with people well-informed?

**Ms JOHNSTON** - Thank you, Will, thanks for your submission. Just extending on your theme around making sure that people can vote in an informed way, I want to move now to the next part of your submission around truth in political advertising. You've raised some concerns about examples of where you think there was misinformation disseminated in elections. You've also talked about how you lean towards no regulation in this space, but think that if there were to be regulation in this space that there needs to be a legal understanding of informed persons and uninformed persons.

Can you perhaps elaborate on how that might work and if there's different thresholds for different participants, whether it be a threshold for candidates or a threshold for the general public in campaigning?

**Mr COATS** - Certainly. Again, this is one of those policy areas that it's very difficult, as you guys know, to make laws in this space and rules. What I would say is it's difficult for people to make an informed decision where you've got 30 to 40 to 50 candidates. A lot of the key information is, on an issue that's critical to me, 'What would that person advocate for, vote for, what's their policy?' Or, 'I'm generally colour yellow. Do they also think like colour yellow people?'

My submission talks about the fact that you can influence people's votes by giving information in that regard. But of course, people only take the information in - if they hear about it in the *Mercury*, they assume it's gone through a process where the journalist has got their name to a story, it's gone through the editor - not to say that the *Mercury* always gets it right, but there is a process there and there's a level of trust. Of course, if newspapers continually print lies, people stop buying the newspapers. I think people who hold certain positions by nature of the position they hold, are in a level of trust in the community. With that, there's that sort of commensurate responsibility.

Ultimately, I just think it's a little bit too messy. My sort of libertarian tendencies tend to say, 'Look, just stay out of it because you're never going to get it right'. But if you do go down the path - and it might just be a matter for the courts to decide ultimately when they deal with these cases - but you just have a category that says this person, the community would expect to be informed about the election, and so they can't be peddling mistruths.

The example I gave, I thought was a reasonably clear one where you had an electorate which everyone knows historically has been a strong sort of Labor area. You had people who are very informed about elections, and even if they're not well-informed about this particular election within literally two seconds of research could have informed themselves about it. I mean, it was on the candidate's site. Frankly, putting stuff out there that was wrong. There will be members of the community where that's the source of information they get.

There are parts of Tasmania where it is really beneficial to be a member of the Greens, because the Greens have a high vote. There are parts of Tasmania where it's really beneficial to be a member of the Liberal Party because the Liberals have a very high vote. If you are able

to go around and say to someone, 'That person's a member of the Greens Party', when they're not, or to say to someone, 'That person's not a member of the Liberal Party', when they are, that clearly will influence people's votes.

If you do go down truth in political advertising, I think you need to create that class where it's sort of like the informed commentator, if you want to use that terminology, versus the uninformed.

Of course, the flip side is if you make this sort of truth in political advertising rules, inevitably you'll get a member of the public who's upset about a certain issue who just says something or post something or retweets something. In this day and age, there's not that editorial overlay, and you don't want those people to sort of be caught. I know ignorance is never an excuse under the law, but you can't reasonably expect people to follow - we all follow politics quite closely, but 90 per cent of people don't. I'd just hate to see someone prosecuted and charged and end up in a whole lot of trouble where they genuinely were ignorant - not that they were ignorant, they were ignorant of the circumstances or the action about which they took. I think there is a level of inadvertent consequence there.

I touched on in my submission - at the end of the day, political association is an important human right. That can also mean not being politically affiliated. If you're very proud of the fact that you're independent and have never been a member of a party, you should be able to say that, and people shouldn't be able to falsely accuse you of following one party's views or other. It's a core tenet of human rights and a democratic society.

It's one of these areas where you're never going to get it right. If you do make laws in this place, it's very hard to draw the lines and who falls what side. If you do go down that truth in advertising path or recommendation, then I think there is that distinction between member of the lay public versus someone who's reasonably expected to be informed.

**Ms JOHNSTON** - Thanks. A quick follow-up question, I'm mindful of the time restraints that we've got. You seem to be suggesting that under that kind of model of informed/uninformed participant, there potentially is a higher standard or a duty more on candidates and parties to make sure that the information they disseminate is accurate. Just like you'd expect media outlets to do a bit of fact-checking before they disseminate information. How would you see someone who has put misinformation or mistruths out remedying that error or information under that kind of process?

**Mr COATS** - It's difficult. I think in one sense it needs to be self-regulating. My partner's name is Cally Snare. Probably none of you have ever heard her name before. She works in gestational diabetes. She's not really politically engaged whatsoever. If you saw a comment that said, 'Cally Snare makes a comment about something about Hobart City', you're not going to have as much trust in her comment because she doesn't have that background, you've never heard of her before, whatever. There's an element of if someone puts out misinformation and they're not informed or not in a position to make an informed comment, the comment just has to stay, because at the end of the day, that's what they said.

It's very difficult to get people to - or to task the TEC (Tasmanian Electoral Commission) with trying to take all these things down, send notices. It becomes quite scary. Even, someone hears a story at a pub, goes home and says, 'Kristie Johnston's going to pull funding from health', or something like that, and then they post and tag you in a comment - it does get very

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messy, and it stops people's right to their own free speech. I think where there is that avenue for correction is more those trusted sources. Maybe there is a role for the TEC to play, or there's a role for the aggrieved party to be able to formally write and say, 'Hey, that's wrong, take it down'. It's a messy area, and it's hard. But you don't want people caught on the wrong side of this inadvertently.

**CHAIR** - Thanks, appreciate that. I know we've only had a short time today, but it's been a really good conversation. Thanks so much for adding to the submission that you had made with today's evidence at this hearing, Will. We appreciate you making time for it. I'm just going to remind you that as I advised at the commencement of your evidence, what you've said to us here today is protected by parliamentary privilege. Once you leave the table you need to be aware that privilege does not attach to comments you may make to anyone, including the media, even if you're just repeating what you said to us. Do you understand that?

**Mr COATS** - Yes.

**CHAIR** - Great, thanks you. If there was anything super urgent you wanted to add in conclusion you can, but otherwise we've run out of time, so we'll bring the session to an end.

**Mr COATS** - No, that's it, otherwise I'm obviously happy if someone wants to contact me, happy to provide my thoughts and further. It's good process and I'm glad that Tasmania has this committee up and running.

**CHAIR** - Thanks, Will.

**THE WITNESS WITHDREW.**



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**CHAIR** - Welcome to the Joint Standing Committee on Electoral Matters. This is our recently convened committee and we're doing our first inquiry into the 2024 House of Assembly general election and 2024 Legislative Council elections. The committee members here for the hearing today include Simon Wood, who is the member for Bass for the Liberal Party, on the screen. We have the member for Mersey, Mike Gaffney; the member for Clark, Kristie Johnston; the member for Hobart, Cassy O'Connor; and I'm the member for Nelson, Meg Webb. We're being supported by Fiona, our secretariat, and Lesley from Hansard here today.

Welcome and thank you for your time. Before you begin giving your evidence, I'd like to ask whether you've received and read the guide sent to you by the Committee Secretary?

**Ms McKENZIE** - Yes, thank you, Madam Chair, I have.

**CHAIR** - Excellent. I'm going to also reiterate some of the important aspects of that document. This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This is a public hearing. Members of the public and journalists may be present and this means your evidence may be reported. It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand this?

**Ms McKENZIE** - I do, thank you.

**CHAIR** - Excellent. What I'm going to do is ask you to make your statutory declarations, each of you.

**Ms ELLEN McKENZIE**, CEO, INTEGRITY COMMISSION, AND **Ms SARAH FROST**, DIRECTOR, OPERATIONS, INTEGRITY COMMISSION WERE CALLED, MADE THE STATUTORY DECLARATION, AND WERE EXAMINED.

**CHAIR** - It may be that you both may need to put your microphones down towards you a little bit more. I'm not sure how the sound is. Alright? Perfect. Thank you so much. Would you like to make any opening remarks before we move into questions?

**Ms McKENZIE** - No thank you, Madam Chair.

**CHAIR** - I know that you've recently arrived into the role, Ellen, and welcome to leading as CEO of the Integrity Commission. I'm sure it's great to have you on board, and I'm sure you're slowly getting used to the role and getting your head around the scope of things. We note that the Integrity Commission made a submission to the inquiry, which was essentially providing us with, in recent years, some research reports that had been undertaken by the commission covering a range of relevant areas to election activity, ethical matters and matters of integrity. One of them - I know at the time the submission was made last year - was the third paper in this series, which at the time an issues paper was being publicly consulted. Perhaps you could, first of all, update us on where things are up to with producing that third paper in the series that you provided?

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**Ms McKENZIE** - Of course. The period for submissions has now closed, and that material is currently being reviewed by commission staff with a view to presenting a report to the board at an upcoming meeting.

**CHAIR** - Right. Okay, that's good. We'll look forward to that progressing further in the coming months, by the sound of it. Can you outline for us - the scope of that paper primarily is about misconduct risks that relate to the use of public resources during elections?

**Ms McKENZIE** - I think that's a fair encapsulation of what that's directed to, yes, Madam Chair.

**CHAIR** - Was that identified as an area of focus for a research paper because it's a matter of complaint that is brought to you regularly in relation to elections?

**Ms McKENZIE** - I might just consult my colleague in relation to that. I think we drew also on broader material that was already available in the public domain, not just about the Tasmania jurisdiction, but more broadly across the country. I think we also took into account material that was available internationally as well. For example, we reference in one of our papers some work that's been done in New Zealand in terms of the principles that they apply in this particular area.

**CHAIR** - Can I ask then, I'm quite interested in what prompts you to produce particular research papers or go into particular pieces of work, certainly when it comes to elections as relevant to this inquiry. Is it on the basis of the quantum or the nature of complaints that are made and brought to the Integrity Commission that might relate to election activities and election periods? Are you able to provide us with some data around that, or some indicative numbers and content around what complaints you might receive? Obviously not with details that would in any way identify them, but that are election related, and the scope of matters or areas that are raised in those complaints?

**Ms McKENZIE** - We could probably run some analysis. It's not something that we could provide today, but we could take that on notice and provide some data around that to the committee in due course.

**CHAIR** - That would be quite interesting. Our normal process is if we speak about a question to be taken on notice, we would write to you about that and detail it for you afterwards.

**Ms McKENZIE** - Of course, yes, definitely.

**CHAIR** - If that's okay, we can include that in something we seek from you afterwards.

**Ms McKENZIE** - Definitely, because we certainly couldn't share that with you because we're not in a position to do that today.

**CHAIR** - No, that's fine.

**Ms McKENZIE** - We'd only really be able to talk about matters that have been finalised, essentially. We could not talk about anything that might or might not be the subject of a current complaint or investigation.

**CHAIR** - We'll certainly frame up a question to describe the scope of what might be useful to us. What I'm thinking about is numbers of complaints that relate to elections, in quite a raw sense, and then in a descriptive way the areas that those complaints relate to, without going into detail of any particular either resolved or unresolved complaint. I think that could be of interest, because it might be indicative about the matters that Tasmanians are finding potentially problematic in the area of elections.

**Ms McKENZIE** - Of course.

**Ms O'CONNOR** - Paper number 3, which has the discussion paper out, seems to me to be an extension of the work that was undertaken in papers number 1 and 2 as they relate to election commitments and the expenditure of public funding in election campaigns. There are some words that are used in the discussion paper that I'm wondering - even though I don't want to pre-empt the report - if you could just flesh out a bit. The discussion paper talks about 'the misdirection' of public resources and implies that in that there is a trade-off and a cost to people who may be deprived of services because funds are being directed in that way. There's also reference to a potential adverse effect on election competition. Could you flesh that out a little bit more? What is the connection - it might seem like a Dorothy Dixier question, but what is the connection? Why is it a problem that particularly governments, who have the advantage of incumbency, can make promises, promise to allocate funds, to the detriment of election competition? Why is that a problem?

**Ms McKENZIE** - Not sure that I'm really qualified to express a view about the political dimension of your question, but I guess what I could do is come at it from the point of view of the concern as to the process that's applied to consideration given to the awarding of grants as a general proposition. I think that's really where our focus is targeted, on that particular aspect of things. That's the issue that's of concern to the commission primarily.

**Ms O'CONNOR** - That's right. Underlying that, of course, is the impact that that kind of use of public funds - and I don't think this is a political question - but the impact of incumbency and the use of public funds on trust in democracy or trust in elections. Would it be fair to say, apart from the transparency and the probity issues here, the Integrity Commission is seeking in some ways to strengthen the democratic foundations? If you don't have proper processes for the distribution of public funds, you weaken democracy and you can weaken elections and trust in elections, can't you? Well, I think it's clear.

**Ms McKENZIE** - I suppose that the issue with there being inadequacy or non-existent processes surrounding the granting of money does have an impact overall in terms of the distribution of resources and the public's perception as to how those resources are being applied. But again, I emphasise that the interest of the commission is in the process that's applied to that. Our view is that there needs to be a process.

**Ms O'CONNOR** - Thank you for that answer. I guess so, in paper 2, there's a recommendation about how you might tighten up that process, which is around section 71 of the Commonwealth *Public Governance, Performance and Accountability Act*, which requires the minister to not approve an expenditure unless they've investigated and determined that the expenditure is in the public interest or to public good. Have other jurisdictions taken this step, and instituted something like that at a state level, do you know?

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**Ms McKENZIE** - I think there is some consideration of what happens in other states in our papers, but again, I wouldn't be able to be specific in responding to that question at this point in time, unfortunately. But we could certainly again, if it's acceptable to Madam Chair, take that on notice as well and come back to you with a bit more detailed information about that.

**Ms O'CONNOR** - Thank you. Just to just to finally close off a bit on this line of questioning, how might state legislation that places those requirements on a minister when determining whether public funding should be expended - how might that tidy up some of those concerns around the misdirection of public resources and the impact on election competition?

**Ms McKENZIE** - I think the point of ensuring that there's a process around the awarding of a grant is really about ensuring that the sorts of considerations that need to be taken into account have been taken into account, that there's an accountability dimension to that decision-making process.

**Ms O'CONNOR** - Yes. Would it be fair to say that right now structurally that's missing? Well, that's pretty clear from papers 1 and 2.

**Ms McKENZIE** - I'm happy for you to respond to that one.

**Ms FROST** - Yes, there is structure in the Commonwealth around when ministers are signing off on grants. That's what we've recommended, essentially, that something similar be brought in here.

**CHAIR** - I'm going to pick up on that area as well, because I'm interested. Obviously, under our legislation relating to the Integrity Commission, a key function is education. I'm imagining that we see these research papers as a plank of that education function.

**Ms McKENZIE** - Absolutely.

**CHAIR** - It's excellent. They're a great resource for us as parliamentarians, for the general public, and hopefully for the government. Paper 2 has got very clear three recommendations there provided, that you were just discussing with the member for Hobart.

I did note in the brief cover letter that came with the commission's submission, that it's mentioned that the commission has written to the Premier on three occasions requesting updates on the action that's taken or plans to take in response to the recommendations in paper 2, and that a response hasn't been received. I just wanted to check when those three occasions where the Premier was written to, to get an update on progress - were they in recent times? Have they just been across the intervening period? Is there an intention to write again?

**Ms McKENZIE** - Do you know the dates? I'll defer again to my colleague who's across that detail more than I am.

**Ms FROST** - Yes, we can confirm this, if you'd like to put a question to us on notice, but from my recollection, we wrote to the Premier shortly after the release of the paper. Then I believe we wrote two times in - we wrote towards the end of 2023 and once last year, would be my best guess about those time frames.

**CHAIR** - Thank you. That's fine for an indicative timeframe. If we feel the need for specific dates, we'll put a question on notice to seek that. Obviously there isn't a way for the Integrity Commission to force the government to respond to recommendations made. At the moment you've now had three letters written with no response, so it looks like the government has no intention of potentially responding to the recommendations at all, and certainly no intention really to respond to your letters by the look of it, which is disappointing, to say the least.

**Ms O'CONNOR** - It's rude.

**CHAIR** - I'm wondering: are there other actions that you would take to help promote action on the recommendations and promote the take-up of recommendations? Is there anything beyond writing to the Premier asking for an update in an ongoing way? Is there anything else that the commission might do to promote the uptake of the recommendations in this paper?

**Ms McKENZIE** - Well, aside I suppose from advocacy by dint of our correspondence to the Premier, I think the way of attack in terms of dealing with issues such as we've identified in those papers, it feeds back into our educative function, which you've already referred to, Madam Chair, is us getting out there into public agencies and talking about the processes of accountability and transparency that need to be applied to the expenditure of public money.

I think that ultimately, and certainly, our experience has shown over the years, is a very powerful way of improving probity and integrity generally.

**CHAIR** - But when it comes to making announcements during electoral periods, of course, it's parties and candidates who are doing that, not people within departments or bureaucracy.

**Ms McKENZIE** - Sure, I understand that.

**CHAIR** - Like, for example, one of the things I wondered when we had the state election, which is the subject of this inquiry, in March 2024 - I wondered, when that election was called, would that have been a moment for the Integrity Commission to make, for example, a public statement reminding broadly the public and also those participating in the election that there was a research paper which suggested appropriate ways to deal with electoral promises and grants being promised during election times, and just put that out into the public domain as a reminder to those involved, but also to the public more broadly?

Is that a step you would consider taking, for example? Because it is only public pressure around this sort of thing in a sense that would prompt a government to act.

**Ms O'CONNOR** - It's also educative. So, it could fit within the charter of the Integrity Commission.

**CHAIR** - Sure, and it helps the public also interpret things that are being done during election periods and assess whether they're being done appropriately or not. Do you see that as something that the commission would have contemplated or could contemplate?

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**Ms McKENZIE** - I think what I would say in response to that, Madam Chair, is that the commission is an independent agency. We regard that as quite a serious aspect of our role. We're conscious of not, I suppose, intruding on areas which don't fall under our bailiwick.

I suspect an election period would be an issue that would cause us - We would not be wanting to enmesh ourselves in the political process for obvious reasons to guard that independence that we have.

**CHAIR** - But the interesting thing about it, and this is before your time, so I'm going to recognise that it wasn't you who was at the head of things happening at that time in 2024 when the election was called: the Integrity Commission did at that time come out and publicly remind everybody participating in the election upcoming that had just been announced, not to discuss matters about sitting MPs that may be before the commission.

That was a public statement made at the outset of an election period, presumably to assist in terms of education of those people who were participating in the election - I wasn't one of them - and those in the public domain, too, about their responsibilities under the act around that. So, I'm interested in why there wouldn't be an educative function that would be regarded as valuable to have some form of public reminder to participants and to the public broadly about what we could expect in terms of a way we can make promises with integrity during election periods? I might be putting you on the spot a bit there.

**Ms McKENZIE** - And again, I'm not sure that - and yes, I am aware of that statement that you've referenced, Madam Chair. As I understand it, that was directed towards a concern about maintaining and protecting the confidentiality of any matters that the commission may or may not be dealing with at a particular time. I think that was the context in which that particular statement was made. But I think that's addressing a particular issue that came up at a particular time.

I think what you've been asking me about is a different issue. I'm again not sure, from the point of view of the independence of the agency, that that is something that I could easily address sitting here now in any event. It would ultimately be a matter for the board any such commentary that would be made at any stage, but particularly during an election campaign, which is a particular period of time in the course of the democratic process.

**CHAIR** - So, I am interested in - well, what's the next step? He has a fantastic research report; it's got three really straightforward recommendations that are sensibly made that align with the Commonwealth; they are basically about aligning with Commonwealth practices. It's already there.

A government of the day, that is through its actions, demonstrating no interest whatsoever in adopting those recommendations or even responding to them, what's the next step in terms of, in an educative sense, progressing that beyond - you've mentioned working with people internally in departments or in the bureaucracy, again, it won't be relevant during an election period. Is there a next step to progress moving this forward?

**Ms McKENZIE** - You're talking, Madam Chair, about the recommendations that we've put forward in Paper No 2?

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**CHAIR** - That's right, yes, page 22 and 23 of Paper No 2, just the three neat recommendations there, which are essentially about legislative change, adopting some rules from the Commonwealth and also fully adopting recommendations from a 2011 Auditor-General report here in this state.

**Ms McKENZIE** - I think, to a certain extent, the response to your question, Madam Chair, will get - the issue that you're raising there will be addressed, I suppose, as part of what we end up doing or what the board decides to do ultimately in relation to the consultation paper, which was Paper No. 3 and any report that the board may determine to release publicly in relation to that and any advocacy that we might do following upon that, whether it be by training or by consultation or correspondence with the Premier or other relevant departments.

**Ms O'CONNOR** - Is there a question mark over whether the board would release the third report?

**Ms McKENZIE** - I'm not suggesting that. No, it's just that there is a process. So, whenever there's a report that the staff of the commission are working on and then prepare, that report goes to the board and there may or may not be a recommendation that a particular report, I'm talking generally now, not specifically, is to be made public, but ultimately that's a matter for the board.

**Ms O'CONNOR** - Thank you for that. Can I ask you a quick question? So, unfairly I think, in most circumstances, the Integrity Commission comes in for criticism from commentators and members of the public and other members of parliament for perhaps not being proactive enough in public engagement. I don't think that's necessarily fair and it just goes back to the question that the chair asked before.

In some ways we count so much on the Integrity Commission to uphold good governance and ethical standards in Tasmania and, in a way, you're it. So, I wonder and it's a sort of a strategic communications decision to make. I don't think there's anything that undermines the integrity or the independence of the Integrity Commission by making politically neutral statements in an election campaign that say, you know, 'let's play this one clean'. I think it might be a way to potentially mitigate some of the criticism or the lack of understanding some people might have about the value of the Integrity Commission. I wonder, I'm just sort of making that as a comment really, because if we saw more of the Integrity Commission arguing for ethical standards, transparency, I think the criticism would abate a fair bit.

**Ms JOHNSTON** - Going back to the sort of genesis of these three papers, I am interested in whether the commission experiences an influx of complaints or inquiries leading up to elections, during elections and then post-elections, and I'm imagining they're probably from parties who haven't received grants or who haven't received resources, public resources, who expressed to the commission either a desire to make a formal complaint or second investigation or to ask questions about matters of process.

Do you record those kind of inquiries that you might receive and have you observed any sort of change in behaviour and patterns in terms of complaints during election periods or, you know, briefly before and straight after in terms of these kind of matters? Is that the genesis for these papers, is that the genesis for these papers? Is that -

**Ms McKENZIE** - Sarah, I'm happy for you to deal with that one, because you'd be more across the data than I would be on that.

**Ms FROST** - Anecdotally, I can't - I would say we haven't seen much of a change in the types of complaints. But, if we were to go into more detail, we'd need to look at that data that we were talking about earlier and come back to you.

**Ms JOHNSTON** - So, maybe not differences in types of complaints, but the number of complaints? Is there -

**Ms McKENZIE** - And the timing as well, you were interested in?

**Ms JOHNSTON** - And the timing of it, yes. Is this something that people are thinking about at all times during an election cycle, or is there something that's a particular focus when we go to an election, in terms of advocacy? And, where you have been unable to investigate or to initiate a complaint process, what's the information you give back to the person who's raised that inquiry with you, in terms of limitations of our system and our processes?

**Ms McKENZIE** - Well, I think at the very least we could say in response to the last part of the issues that you've just raised is that we do write to complainants where they've been identified to us at the conclusion of an assessment of the matter, whether it be the preliminary stage, and there are a number of stages through the process of dealing with a new matter that comes in. And if, for example, a decision is made at the very beginning of the process - that a complaint be dismissed - we will write to the complainant if he or she has been identified and give them an indication of why it is that that complaint has been dealt with in the way that it's been dealt with.

**Ms JOHNSTON** - Would that information be along the lines of, 'there's no legal basis for us to investigate,' so it's a more of a formal process, or would it be more around an educative kind of information provision back to the complainant about the lack of legislation or policy responses? I'm just -

**Ms McKENZIE** - I think it - well, I can only really speak to what I've seen, and as the members of the committee know, I've only been in the role for about a month now. But, the matters that I've seen on a number of the occasions where matters have been dismissed at that first stage, it's because there is no misconduct that's been identified. Sometimes it's because it's already been dealt with by somebody else, for example. And, if it's already been dealt with by somebody else - appropriately - on the assessment that we make, then there's an issue about use of our resources to pursue something that's already been dealt with. Sometimes it doesn't fall within our jurisdiction.

As an example - I mean, I'll just take a general example here - for example, if a matter is before the courts, then that's something that, you know, we obviously would not involve ourselves in. So, there's a number of reasons set out in the relevant provisions of the Act for why a matter would not pass through the process, and they're just some of the key examples that I've seen in the last few weeks.

**CHAIR** - I'll move on to a different area, if I may, if we've finished on that one.



I was noting in paper No. 1, which is Tasmania's Electoral Act Offences and Campaign Conduct paper, some of the things you mentioned. That was published a couple of years back now and before we dealt with some amendments to the *Electoral Act* in recent years, I think. And so, I did note, in the paper where it discusses the constraints that the Electoral Commission had - at the time of writing the paper - around investigating corrupt practices. Just looking to the conclusion section of that paper, it says: 'It's not currently possible for the Tasmanian Electoral Commission to adequately investigate or enforce compliance with the corrupt practices provisions in the Tasmanian *Electoral Act*. Furthermore, the division in that act between illegal practice and corrupt practices is illogical and confusing.'

Then, in the next paragraph, it is noted that, 'This may now have been remedied with the drafting of the Electoral Matters (Miscellaneous Amendments) Bill 2021 (Tas).' We have had that bill pass through parliament now; I think in 2022 it came through. Were you satisfied, or was the commission - has the commission done a subsequent assessment of whether the bill that was ultimately passed, the Electoral Matters (Miscellaneous Amendments) Bill, addressed the issues that had been raised in this paper around the powers of the Electoral Commission to investigate and enforce compliance with/around corrupt practices?

**Ms McKENZIE** - Happy to ask my colleague to deal with that one, if that's okay, Madam Chair.

**Ms FROST** - I think that question is probably best directed to the Electoral Commission, but I did have a look. I would prefer to talk to them before giving a definitive answer, but it looked like it had been remedied by some changes that will come into force on 1 July this year.

**CHAIR** - Right. Can you specify what they are, those particular -

**Ms FROST** - I'd need to have a copy of the Act in front me, I'm sorry.

**Ms O'CONNOR** - Is that the *Electoral Disclosure and Funding Act 2023* or 2024?

**Ms FROST** - No, it was the electoral matters.

**CHAIR** - It's the one that went with it.

**Ms O'CONNOR** - This is the *Electoral Matters (Miscellaneous Amendments) Act*, okay.

**CHAIR** - We can move on to another topic. As you say, we could take that up further with the Electoral Commission and see where they felt that had landed in terms of furnishing them with the appropriate powers. Legislative change can deliver, certainly, beefing up the powers. You did also mention in this paper about resources, you said:

... the TEC also lacks the resources - including staff skills - required to investigate and prosecute corrupt conduct.

Resourcing is a separate matter altogether, as we know, relating to the Integrity Commission as well as the Electoral Commission. I would have thought that the TEC would have been better-placed to ensure it had resources required - because it has reserved-by-law funding for various of its functions, which is something that the Integrity Commission doesn't have the luxury of having. It's probably more a question for the TEC, it's not something you

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could comment on in terms of an update about that lack of resources that you noted in this report?

**Ms McKENZIE** - I think that's fair, Madam Chair, yes.

**CHAIR** - Okay. I'm going to move on. Have you got any more on that particular - or do you want us -

**Ms O'CONNOR** - Not on that - but in a minute - I want to ask a question. Has the Integrity Commission - obviously we're looking at the 2024 state election - has the Integrity Commission had a look at the conduct of the 2024 state election? If so, are there any broad observations, or is it not a matter that's been specifically examined yet? The first two reports are connected to a state election in some way. I'm wondering if there was a broad observation of the election that we're looking at now.

**Ms McKENZIE** - I think the answer is no. I don't think the commission has. I think the focus of our work, certainly recently, has been on the third paper that was put out, and the consultation process in relation to that. Now we're looking at the preparation of the report or the finalisation of the report.

**Ms O'CONNOR** - Would the third paper potentially reference the 2024 state election as a point in time, like the other papers have referenced?

**Ms FROST** - I believe there may be some, but again we just have to see what the final content is of that report.

**Ms O'CONNOR** - Okay, and sorry to badger you on timing, but you know, we like to know a deadline here. When is the third report likely to land?

**Ms McKENZIE** - I think I can say generally - and I wouldn't want to commit us, because sometimes these things end up taking longer than one would like - I would like to think by the end of the current financial year that there will be a resolution of that process.

**Ms O'CONNOR** - Not necessarily a report tabled in parliament, but a resolution.

**Ms McKENZIE** - Well, hopefully there will be. But again, it's a matter ultimately for the board. Hopefully there will be, and that there might be some useful material in that for members and the committee to consider, if indeed your work is continuing at the time of the release of any report, should that be approved by the board.

**CHAIR** - Thank you. It's interesting because that picks up the area I was going to with my questions as well, actually, member for Hobart. I note, in the second paper, which had looked at that area of rules around promises and grants made during election periods, it specifically said that the 2010 and the 2018 elections both provide examples of why such rules are needed.

The further we get away from 2018, the more it looks like this is reflecting on historic examples and processes that happened that may not be relevant. Making an assessment, or including or updating this work with more up-to-date examples from either the 2021 or the 2024 elections would be particularly useful and pertinent to keep this very much as a current

area of concern and potential for improvement. My question was going to be around whether you are intending to look at more recent election periods, the 2021 and 2024 elections, to update the examples that you have looked at here as providing the rationale for your recommendations?

**Ms McKENZIE** - I think part of the issue in relation to that would also be, what, if any, information we could include, depending on whether or not there had been matters that had been identified to the commission. There's that constraint that already exists in relation to any such information, but again, we can certainly take that on board - what you've raised with us.

**CHAIR** - Do I understand you to mean that if complaints or concerns have been brought to the Integrity Commission that related to this area of concern around the making of electoral promises and potential pork-barrelling, if they had been brought to you in relation to the 2021 or 2024 elections, that you could then potentially look at them as being relevant to this work and updating this work, but if you hadn't received complaints of that nature or concerns raised of that nature, it would be more difficult to do that?

**Ms O'CONNOR** - Or a submission.

**CHAIR** - Yeah, or a submission.

**Ms McKENZIE** - There's always public source material, I think, that the commission is able to reference in reports, but if it's about, with greater specificity, actual identified alleged misconduct, then that's a different issue. That's corralled, as I've just mentioned, by the confidentiality provisions that exist under the Act and we're not able ever to say whether or not a matter is the subject of a complaint or an investigation.

**CHAIR** - This is probably a comment more than a question, but the thing I find concerning is that, having done this excellent work, which is then subsequently ignored by a government of the day, as we continue into the future, election by election, it becomes more the story then that this is a fait accompli, that this is what parties do when they run for election, they pork-barrel, essentially, or close to it. And, the community becomes inured to it. I'm just wondering what's the next step, which links back to my earlier question, what is the next step to promote adoption of practices with integrity in this space - as described in your paper in the face of a reluctant, if not obstructive, government around that?

**Ms McKENZIE** - I think I probably would reference my earlier answer that we certainly - if there's a public report, that will go out into the public domain, we will correspond, I anticipate, with probably a number of government agencies in relation to that report, and then go out as part of our usual educative role and provide education to public agencies to enhance the probity of their practices surrounding the use of public resources.

**Ms JOHNSTON** - If I can go back to the situation the Chair mentioned earlier regarding the Integrity Commission issuing a statement during the election period relating to complaints matters that were underway and under investigation and issuing some warnings about what would be discussed in the public domain about those particular matters: not wanting to speak about those particular cases, but if this committee and I'm sure we all at the table here are concerned about integrity in election processes, ensuring that the integrity within those elected, in terms of members of parliament - that's the whole purpose of the commission, and the educative function is that we have members of parliament who act with integrity elected, and,

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noting that the chair of the Integrity Commission, I think it was at Estimates last year, indicated that there were resourcing constraints the Integrity Commission to have those matters completed. Is it a concern to you that during election campaign on the public record there were members of parliament under investigation by the Integrity Commission and those matters were unable to be finalised in time for an election? And did you want to elaborate on resourcing issues or whatever it might be that has prevented that from happening?

**Ms McKENZIE** - I probably really can't comment particularly in response to the question that you've made, other than to say that the length of an investigation is affected by a number of factors. It's certainly a matter of public record that there is a resourcing issue with the commission - probably don't need to talk too much about that - but every investigation is a unique thing and investigations throw up different issues that take whatever amount of time it takes for them to be dealt with, and we can't control that.

**Ms JOHNSTON** - So, broad principle-wise then, would you agree that it's undesirable that an election is conducted with members of parliament being investigated whilst that election's been conducted?

**Ms McKENZIE** - I can't comment on that one, I'm afraid.

**CHAIR** - I'll move on then. It's a difficult one, we appreciate. I think we would always all find it undesirable. Certainly.

We've got Paper No. 1, which is around the *Electoral Act* offences and campaign conduct area. We've got Paper No. 2, which is around the grant commitments in election campaigns and contemplating that risk of pork-barrelling. Then we've got Paper No. 3, which is being produced currently, around the misuse of public resources during election periods. Is that the complete set or is there an intention to move forward to another topic that is election related after that?

**Ms McKENZIE** - I'm happy for you to answer that one.

**Ms FROST** - At this stage, it is the complete set. There are some other potential topics that we might look at down the line, but, as we've discussed, our resources, if we were to go back to looking at those first couple of papers again, that would have to be a thing we did instead of doing the fourth paper, for example. So we always need to make difficult decisions like that.

**CHAIR** - Beginning the work on this set of research papers, and it's going to be before your time as CEO this past month, but your colleague might be able to reflect on this, was the decision to embark on a set of research papers relating to election issues around integrity, was that done because of a bulk of complaints brought, in relation to these sorts of matters? How did we arrive at this piece of work, this series of works?

**Ms McKENZIE** - I mean, I can't speak to it, of course. I'm sorry, Madam Chair, I'm just referencing the paper, because in our introduction section, sometimes we set out why we've -

**CHAIR** - I mean, of course it aligns to your objective as a commission and it's a natural area that we would think of, needing to think about improving integrity in our democracy and

in the way we function here as a parliament, but was there any particular prompt is what I'm looking for.

**Ms McKENZIE** - On the basis of what, and I have to rely on the paper, Madam Chair, because I wasn't in the chair at the time, so to speak, apparently what kicked this off was an identification of risks that the commission had managed to do and also there had been complaints, assessments, and investigations as well, which informed the content of this and the subsequent papers.

**Ms O'CONNOR** - We've got a series of recommendations. There's a knowledge base of some of the problems related to political donations or what is described as pork-barrelling in the paper. If we flip that around, given that our work is to look at the conduct of an election and what a fair and transparent election campaign might look like, are you in any position to sort of describe what it might look like? We might have, for example, a section 71 statute here in Tasmania around ministerial responsibility and accountability. We might have particular grants processes in place.

Is it possible just to talk about some of the things that we might, as a holistic approach, recommend, apart from just sort of re-recommending what you've recommended - which we'll probably do, I think - but just holistically, what would be best practice to have in place by the time the next state election rolls around to make sure Tasmanians vote in knowledge of the money trail?

**Ms McKENZIE** - I am not really sure that I can do more than reiterate what we've said in the paper by way of the recommendations that we've made. As I mentioned before, the interest of the commission is in the process that surrounds the use of public resources. That's where our role kicks in, really, in terms of that part of it. I'm not sure that our remit goes beyond that.

**Ms O'CONNOR** - At one level you could argue that the act enables the Integrity Commission to engage in public education, which it does. In a way I feel like that's a missing part of the papers, that there's a broad educative and empowering job of work to be done here within the Tasmanian community and electorate that we who believe in democracy can help to argue as well. Would you agree there's a need for a broader community education about probity and transparency and good governance?

**Ms McKENZIE** - Well, a key part of our role is all about educating mainly those in the public sector, frankly, about how they exercise their functions and deal with the handling, generally, in particular the distribution of public resources. We're very interested in - we regard that as a very important part of our role. Also, equipping agencies to be able to deal with alleged misconduct themselves, to be able to identify it and then deal appropriately with it.

**Ms O'CONNOR** - I guess the argument I was making was really for a maximally informed community as well, about risk, what corruption looks like, what we take for granted in Tasmania, for example, as just the way we do business. If there is a broader educative job of work to be done here, that wouldn't necessarily be a huge drain on resources, it's sort of an add-on to what you're already doing. It's not going out to community centres and holding public meetings or anything like that. But if there's - you know, it's not just who's in government, it's the people who are served by those in government.

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**Ms McKENZIE** - Certainly the material that we publish is available on our website, and obviously we table reports in parliament as well, as the members of the committee know. We publish a whole heap of material that's available in the public domain. To that extent, I suppose we are addressing the particular job of work that you're talking about. In terms of -

**Ms O'CONNOR** - Proactive.

**Ms McKENZIE** - I suppose in terms of the biggest impact that we can have, it really is working with our stakeholder agencies to help educate them and to guide them through the process of dealing appropriately with misconduct.

**Ms O'CONNOR** - It's sort of a 'yes, and', isn't it? Ultimately you can have a public servant bureaucrat who has the highest ethical standards of conduct, and yet the minister will say, 'This is the way it's going to be done, this is what we're doing'. Unless you have those, as has been recommended in these papers, or Paper 2 particularly, unless you have those structures in place, the highest levels of education of the bureaucracy aren't going to counter ministerial influence over spending decisions, necessarily. Do you think?

**CHAIR** - We'll take that as a comment.

**Ms O'CONNOR** - It's just so hard for a public servant to deal with 'the minister wants this done, this is the way it'll be'.

**Ms JOHNSTON** - Can I add to that, perhaps a question in delivering that education, particularly to the public service - have you anecdotally had feedback from public service that they feel uncomfortable with the kinds of things that they've been asked to do by ministers? I assume you go out, when you deliver that education to public service, you talk about legislation and all those kinds of things, you talk about the matters raised in your papers. Have you had anecdotal feedback from them, that they feel an uncomfortableness about the kinds of things that they've been asked to do, or the processes that they have in place within their offices which may not meet what we would hope to see as a gold standard in proper process for administering grants? Is that the feedback you're getting, or is it quiet?

**Ms McKENZIE** - I think we're at a little bit of a disadvantage because neither Sarah nor I actually do the training, so it's a little bit difficult.

**Ms JOHNSTON** - I appreciate that.

**Ms McKENZIE** - If you want some more information about that, if it's okay, Madam Chair, we can again take that on notice and speak to our trainers and see whether -

**Ms JOHNSTON** - I just recognise that there might be people - I'm sure there are - people in the public service who feel stuck between a rock and a hard place. That they, you know, they want to uphold the most ethical standards and act with integrity, and they can - they might agree wholeheartedly with the matters that you've raised, but are in the position that their master tells them to do something very different. So, I'm just keen to know what the feedback from - and whether that's informing, then, how you approach future education sessions and things like that.

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**Ms McKENZIE** - Well, I think we always take on board the feedback that's given during the sessions to try to make those sessions impactful and relevant. It's not much point trotting out training if it's not really addressing the particular need of those who are coming along to the training.

**Ms JOHNSTON** - Well, just frustrating, though, that they can't - yes.

**CHAIR** - Right. I think we're coming to a close -

**Ms O'CONNOR** - I've got one more quick question, if we're just winding up.

**CHAIR** - Please, then. Sure.

**Ms O'CONNOR** - On the agency education works that the commission does, which is so important, does the commission go out into workplaces around the state? Is that how it's done? How does it practically work?

**Ms McKENZIE** - Well, I can give an example. We went out a couple of weeks ago to the Police Academy and we delivered a session to the police recruits, and we do that regularly through each year. We also did one recently for Tas Ambulance as well. I think we went out to their office, did we not?

**Ms FROST** - Yes.

**Ms O'CONNOR** - That's great.

**Ms FROST** - Some of the training is bespoke for particular agencies like that, and others we have courses where people from all different parts of the public sector can sign up and attend.

**CHAIR** - Certainly you come to this workplace and deliver training here for MPs at regular intervals, so for those who take that opportunity up, it's great.

Okay. I've noted a number of matters that we will write to you about, in terms of questions taken on notice, and that will be nice and easy to reference because it'll have the details in it. And so, that will be something that happens subsequent to today's hearing.

Thank you so much for your time today. We appreciate it very much. I need to advise you that the commencement of your evidence, what you've said here today is protected by parliamentary privilege. Once you leave the table, you need to be aware the privilege does not attach to comments you may make to anyone, including the media, even if you are just repeating what you've said to us. Do you understand?

**Ms McKENZIE** - We do. Thank you.

**CHAIR** - Thank you so much for your time. We'll end the hearing and turn off the broadcast.

**THE WITNESSES WITHDREW.**

## PUBLIC

**CHAIR** - Welcome to the Joint Standing Committee on Electoral Matters and our inquiry into the conduct of the 2024 House of Assembly General Election and 2024 Legislative Council Elections.

At the hearing today, we have committee members Mr Simon Wood, who's a Liberal member for Bass, Mike Gaffney, the member for Mersey, Kristie Johnston, member for Clark, and Cassy O'Connor, the member for Hobart, and I'm Meg Webb, the member for Nelson. We also have Ben assisting us with Secretariat and I thank Lesley from Hansard.

Welcome and thank you for your time today and thank you for your submission, Angela. I'm going to read out some formal things to begin with. Before you give your evidence, I need to ask you whether you've received and read the guide sent to you by the committee secretary?

**Dr OFFORD** - Yes, I have.

**CHAIR** - Excellent, and I would also like to reiterate some important aspects of that document for you. This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This is a public hearing. Members of the public and journalists may be present. This means your evidence may be reported. It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand?

**Dr OFFORD** - Yes.

**Dr ANGELA OFFORD**, WAS CALLED, MADE THE STATUTORY DECLARATION, AND WAS EXAMINED.

**CHAIR** - Would you like to make some opening remarks before we move on to questions from the committee?

**Dr OFFORD** - Yes. I want to thank you all very much for the opportunity. It's so fantastic that the inquiry's been established. I'm very passionate about representative democracy and all things democratic and great governance, so I do very much appreciate this. It's a fantastic initiative. After looking at all the other submissions, I did realise that there were points that perhaps I wasn't really clear making personal recommendations about and there were common themes. So, I kind of just wanted to run through those to make sure that you knew where I stood on those. I could have been a bit clearer in the submission that I made.

I wasn't aware that there were problems with voter accessibility, and I do support all the recommendations made by those groups who pointed out that there were problems. They had a lot of good recommendations there, so I certainly support those. I have worked for the TEC and the AEC, just on election day, so I'm kind of well aware of the processes and procedures for helping people that do require assistance. From a personal point of view, when I've been involved in that, it's all gone very smoothly, but I certainly wasn't aware of the problems that have been highlighted, so I was really pleased that there were some good recommendations there.



## PUBLIC

I certainly would like to support recommendations strengthening political donation disclosure laws and recommendations on reforms to grants-slash-whatever-name we give them, otherwise known colloquially as pork-barrelling during election campaigns.

I hadn't given much thought to your fixed term and, from personal experience in other roles, I really believe, and especially as a newly elected representative, if you are new into this job, it would take a year or so to find your feet, work out how it all works, and how best to do the job. So, I would support a fixed four-year term, understanding that Tassie and only the federal government don't have those fixed terms, with the caveat that I would like to speak to Kevin Bonham about the reasons why he doesn't, because I'd love to understand that.

I support tightening rules around candidate advertising and truth in political advertising, and I know that's a current and ongoing thing, but it's very important.

Certainly, and this runs into my submission, I discovered a dire need to improve the general public's understanding, and I was certainly in this boat until a few years ago, about governance, about democracy, about representative democracy, about parties and independence, and everything, because I spent a lot of my time - and I noticed one of the other submitters said this too, actually a couple - I spent a lot of my time explaining who I was, what I was doing, what parties are, what the other parties were, what being in government would mean, how you do the job - and that was quite eye-opening and alarming. I don't know how in Tasmania we compare to similar demographic areas in other states and territories in Australia, but that was quite eye-opening for me and definitely we would all benefit if we could lift everyone's understanding in that area. I know that there are really good school campaigns, but we do need to improve on that and definitely adult education as well.

I'm sure there's a lot to unpack there and how we could go about that, but there's a dire need for that because then it reflects on our whole democratic system if people don't even understand what they're doing when they're voting, what it means, then. Yes, we want to make our democratic system more robust.

I would like to add one thing here, but can we keep it just closed just because -

**CHAIR** - If it's something that you would like to tell us in camera, we need to discuss that and decide together. We could leave it till the end. Would you like us to quarantine some time at the end?

**Dr OFFORD** - That would be fantastic.

**CHAIR** - That's fine then.

**Dr OFFORD** - It won't take long, but yes.

**CHAIR** - Let's keep moving then with material that can be public. Have you finished your opening statement?

**Dr OFFORD** - Yes, thank you.

**CHAIR** - Okay, great. Questions?

**Ms O'CONNOR** - Just a quick one, I'm interested in your - because it's actually come up again today around early voting and how it's becoming much more common for people to vote early and the percentages of people who do it each election goes up. What was your experience as a candidate when you're knocking on the doors and you want to have a persuasive conversation with someone? Were you coming across that quite a bit? 'I've already voted, that's it. I've already voted.'

**Dr OFFORD** - Yes, and even in my workplace, a lot of my colleagues had already voted. Previous elections have already said they've already voted and it can't be an informed vote because very few of those people would be aware of who all the candidates are, let alone what they stand for, and have been able to access that information in the first place. So, that's really alarming. I was forewarned about early voting and how it's been exponentially increasing in Tasmania and I was still surprised by the numbers. And, I reflect on that and know that they can't possibly know who all those candidates are on the voting form and, therefore, again, it's not an informed vote.

**Ms O'CONNOR** - When you talk to people who had said they'd already voted, what were the reasons given to you by voters for going early, was it convenience or -

**Dr OFFORD** - 110 per cent convenience.

**Ms O'CONNOR** - Convenience, not because they were already aligned to a party and we're going to vote, for example, Green anyway or Liberal anyway. Any qualitative information there on why?

**Dr OFFORD** - No. I didn't ask, I guess, but definitely they all proffered that it was just because on the day they were doing something else. And so, it doesn't - it's not - I do understand that you've kind of got to declare that there's a reason why you can't, but that's not policed, and it's definitely convenience. It's definitely convenience. And, I understand that as much as anyone else, but it's not good for our system. It's anything but.

**Ms O'CONNOR** - What about a shorter early voting period?

**Dr OFFORD** - I kind of actually think shorter, but also not, as it was in the state election, just a few days after the candidates are announced because there is no time for someone who's motivated to look up the candidates and all the parties, and try to work out whether their values align and their policies and ideology and everything else, and there just isn't time. And then, after reflection as well, some people are going to want to change their vote. Some people are fixed already and they do know and some people will regardless - they're going to be happy with what they've cast, because yes, they were always going to vote that way. But, less and less. And then, if something happened and they did want to change their vote, it's too late. That's not ideal.

**Ms JOHNSTON** - Thanks, Angela, for your submission. I was really interested in some of the aspects you raised around independents and how they are put on the ballot paper, and I'm quite pleased that there are more and more independents running, as an independent myself, for elections. But, you've raised a really interesting point - I don't think anyone else has highlighted - about how some independents - such as myself - received their own column. They had a group one, and they - 100-odd signatures on a nomination; others only had 10 signatures on their nomination, and were therefore grouped together in an ungrouped category, and the

disparity about how that looks on the ballot paper to people who might not be informed about, one, what an independent is, or the structure of the ballot paper and how parties and independents are treated differently. Do you want to elaborate on what you've experienced, in terms of some of the confusion around that rule? I found it, myself, very hard filling in the nomination form to figure out what box do I need to tick to make sure that I'll get my own column rather than be in the group column, and I like to think I'm fairly informed about elections. Can you perhaps elaborate a bit more on that, on your experience?

**Dr OFFORD** - Yes. So, similar to yourself, I received conflicting information about what it meant to have a column to yourself or be put in the ungrouped at the end. And, I felt that it was advantageous to have a column to myself, because I definitely know very few people understand what that column at the end is, right? And it just says 'ungrouped,' so they don't know. They don't know. And they certainly wouldn't be going, 'Oh, that's all the independents,' right. Though, having a column by yourself, it doesn't say also who you are. If you're an independent, you don't get the word 'independent' after your name. So, that - it just confuses voters, confused me, confuses - it certainly confuses voters. And it's terribly inequitable that if you, for whatever reason, haven't made that value judgment, I guess, and you get only 10 nominations, and are going to go into that column at the end. I'm not sure that everyone, therefore, candidates, would understand that you stay in that ungrouped column at the end, and it isn't clear who you are, and it isn't clear that you're not actually grouped with everyone else in that column at the end.

And that's, perhaps, a separate thing, where I think general understanding of what an independent is - it's kind of very confusing in people's minds and they think it is kind of a group of people who all have the same values and ideology and everything else.

**Ms JOHNSTON** - To remedy this, maybe, do you have a suggestion about how that might look moving forward? Would it be that every independent candidate gets their own column, that maybe has a higher threshold of signature nomination, or -

**Dr OFFORD** - Yes. I think that would be fair.

**Ms JOHNSTON** - That would be the appropriate thing? So that it was - so that, you didn't have the choice to be 'ungrouped' or at an independent column; everyone was an independent column, their own columns, but it was perhaps a higher threshold of nominations required?

**Dr OFFORD** - Yes. So, maybe all of those go ahead and get 100 signatures. And you know, that in and of itself is a great exercise. It's very time consuming, but it's kind of doorknocking at the same time and introducing yourself. It's hard to explain that you want a signature so that you can nominate to be, because it's like I had to explain it doesn't mean that you are going to vote for me, doesn't mean -

**Ms JOHNSTON** - You have to.

**Dr OFFORD** - I just need signatures of somebody who's a resident here so that I can run as a candidate. So, it's an interesting conversation, but it is an awesome way to introduce yourself, and everyone should, if you can, do that. Not everyone can do that, when you think about it. Not everyone can walk door to door.

**Ms JOHNSTON** - You just highlighted a disparity between the way independent candidates are treated in the ballot paper and party candidates.

**Dr OFFORD** - And I'm thinking, I don't know about party candidates, but you don't have to go out and get those nominations, right? As I said, I think it's a good thing. It's a good exercise. It's a great exercise. But, yes, maybe everyone should, and it shouldn't be that fixed column at the end. I mean, even if that stays as a column of grouped, which ideally it wouldn't, but if it did that should be rotated around. It's not fair that they stay there. At all. There's no equity in that at all.

**Ms O'CONNOR** - You talked a bit earlier, Angela, about voter access after you'd read some of the submissions that have been put into us so far. What do you see as the obstacles to voter access?

**Dr OFFORD** - Insofar as physical access to voting and having a secret vote?

**Ms O'CONNOR** - Well, this is the question, isn't it? There's physical access, there's access to information, there's access to candidates.

**Dr OFFORD** - It's all of it, right?

**Ms O'CONNOR** - There's a whole lot. So, in your experience, which is quite unique, you're coming in sort of from outside a system, was this your first election campaign?

**Dr OFFORD** - Yes, absolutely, it's all new.

**Ms O'CONNOR** - So really fresh observations of some of the impediments to access.

**Dr OFFORD** - Aside from the fact that there were systems in place but weren't working for sight-impaired and print-impaired people, aside from that physical accessibility on the day of voting, as I said, my experience has been quite good. It would depend where you're going to vote and a whole lot of things, but I think the TEC and AEC do a really great job. There's always improvements, but yes.

As far as accessibility to candidate information, again, I go back to early voting. Unless you know, as a voter, that you need to go to the TEC website to find the list of candidates - unless you know that, and unless you have looked at the masthead in the next 48 hours, on the Monday, as it turned out this time, you could go in and early vote. My understanding is they don't all rush in at once. This is what I was told. First week of early voting, people dribble in. Then I think it's that second week that everyone comes in, and so there's a lot of people then. I guess you could argue you have seven days to still try to have voters accessible to information about the candidates.

But then, unless people know where to go and how to access it and can access it, so that they get a copy of one of the four mastheads, and/or they have access to that, and/or they know to go to the TEC website, then you don't get information about candidates, even if you want them. Some people don't, but you don't have access to that information, so you're not at all making an informed decision when you go to vote. And I, so many times, came across people when I was walking around and talking to people, and my work colleagues, so many say, 'I didn't know where to go', and/or, 'I could not find information on the candidates'.

## PUBLIC

**Ms O'CONNOR** - Unlike local government elections -

**Dr OFFORD** - Unlike local government.

**Ms O'CONNOR** - where you're provided, as you make the point in your submission.

**Dr OFFORD** - I absolutely think that would be the solution. You can still choose not to - some people don't have a letterbox anymore, however, and some people pick up the mail and go inside and open it and then - or not - and pass it on to the rest of the people in the household, or whatever. At least that's a more equitable opportunity for people to access all the information in one spot, and/or be directed where to go, if they want more information. As opposed to parties and individuals, independents, somehow trying to get that information to the people.

**CHAIR** - I'm just going to pull us up here because you requested earlier to provide some evidence in camera and I'm mindful of time. I'd like to have time for that. In order for that to happen, the committee has to formally consider that request. So what I'm going to do is stop the broadcast and then ask you to step out of the room, Angela, if that's okay. We'll close the door and then we'll consider your request, and then you'll come straight back in.

**Dr OFFORD** - It's not more than a few minutes of information.

**CHAIR** - Great, jump out.

**In camera evidence taken.**

## PUBLIC

**CHAIR** - Welcome to the Joint Standing Committee on Electoral Matters, our inquiry into the 2024 House of Assembly general election and 2024 Legislative Council elections. Thank you for your time.

The committee members here with us today: Simon Wood's on screen here, member for Bass; Mike Gaffney, the member for Mersey; Kristie Johnston, member for Clark; Cassy O'Connor, the member for Hobart; and myself, Meg Webb, the member for Nelson. We have Ben assisting us with secretariat and Lesley from Hansard.

Thank you so much for coming in. Before you begin giving you evidence, I'll ask whether you've received and read the guide sent to you by the committee. If so, I'm going to reiterate some important aspects of the document.

This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings.

This is a public hearing. Members of the public and journalists may be present, and this means your evidence may be reported. It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence.

Do you understand?

**Prof HERR** - I do indeed.

**CHAIR** - Excellent. Would you like to make the statutory declaration?

**ASSOCIATE PROFESSOR RICHARD HERR WAS CALLED, MADE THE STATUTORY DECLARATION, AND WAS EXAMINED.**

**CHAIR** - Now, would you like to make some opening remarks in relation to your submission before we move on to questions?

**Prof HERR** - Well, my first opening remark is: thank you very much for taking a submission that is, to some extent, off-the-wall from what I know is your principal concern. But it has been a concern of mine for a long time, because it's just so irrational. I thought you might offer a chance to take some of the irrationality out of campaigning - and also help keep the vice-regal office out of the partisan debate, which is my primary concern.

I'm wearing my Samoan parliamentary tie. But the issue that I'm dealing with in my submission is currently before Samoa, also in Fiji, and it's all - it goes to the problems of what the head of state does in cases where there are disputes and minority governments and the like. We've had that in Tasmania, particularly in 2010, where the campaigning actually led to claims against the governor for - 'one party promised that they wouldn't do deals; now they've done a deal; you should respect their decisions that they would never do a deal'. Alright. The governor doesn't take advice from anybody except his first minister, and to suggest even that the governor should read the newspaper to try to take advice on what parties are saying, or what

intended ministers might want to have as a relationship with the Crown - is just bizarre. It shouldn't be done. There's no need for it. Nobody else does it.

I guess my question to you is: if you want to keep it in the *Constitution Act*, can you explain to me why you need it? The history of it, as I point out to you, is lurid. It's all to do with people at the time not wanting ministers to get paid when the rest of the parliamentarians in a dissolved parliament don't get paid. Then they didn't like it; they wanted to create a level playing field and they said alright.

If you can look at the previous subsection 2, you can see it says if someone ceases to be a member of the House, they cease to be a minister. Dissolving the parliament means everybody ought to be, so it's bizarre wording anyway. It ought to be sorted. I apologise to you in the sense of trying to encourage you to do something that's been on my agenda for reform for 15 or 20 years now, but I think it is part of your inquiry in terms of making campaigns more about the issues and less about getting the vice-regal representative to be involved in who wants to be minister and how they get there.

That's my primary one. As I said, there are other things I'm happy to talk to you about if you wish, but my primary concern is that, because that's the one that I think you can fix easily. I don't see - I would be disappointed if you found a reason for saying, 'Well, we like living with the uncertainty'.

**CHAIR** - I'm interested in whether there - are we unique in this feature? It looks to me from your submission that we might be unique in this feature.

**Prof HERR** - It seems to me that you are.

**CHAIR** - Right.

**Prof HERR** - As I said, the reason for it wasn't because it was needed, but it was because of the jealousy between ministers and members. Members - when the parliament is dissolved, as you all know if you've been a member in the lower House, you don't get paid. But ministers continue to get paid until - in the 1950s they didn't like it, so they used some leverage and said, 'We want to make sure that there's a limit to how long you can get paid for'.

**CHAIR** - Right. They didn't want it creeping too far past election day.

**Prof HERR** - No, because again, if we had a situation like Belgium, where it takes six months to form a government, and you have ministers continuing in office but no effective parliament - of course it doesn't exactly apply because the members would still be in power. There's no particular reason for it.

**CHAIR** - It puts in place some sense of imperative after an election to make an arrangement, potentially, that might be a minority government arrangement. I wonder too about the detriment there if there are, for example, independents or minor parties who are entering into negotiations with a major party about forming a minority government, whether it can also become part of a point of leverage or pressure to make such an arrangement because of this time imperative.

## PUBLIC

**Prof HERR** - That was the case in 1989 as you - well, let me say, all of you are too young to remember it clearly. I remember it very clearly. You know, where the governor was under that pressure, so he recommissioned Robin Gray because he had to, basically.

**CHAIR** - To act within the law, as it stands.

**Prof HERR** - Yes. Well, to have a government. Again, if you live in a constitutional monarchy, as we do, the monarch should only act on advice. The advice has to come from the first minister. If there isn't a first minister -

**CHAIR** - Was it not the case, though, that you can potentially have some leeway, in the sense that, and I think this may have happened in 2010, some of us here were there -

**Ms O'CONNOR** - I want to ask about that in a minute.

**CHAIR** - where you can actually put in place, say, a very small executive. You could have a premier and some key ministerships if we were to put in place, while the rest of the arrangements about what the government of the day is going to look like is negotiated and formed. Then, whenever that occurs, you complete the Cabinet.

**Prof HERR** - As you will recall, if it weren't for the bicycle ride up Mount whatever, you know, to provide a resolution. The other side was arguing that the promise had been made, that it should be adhered to and the opposition should form a government. Then it would be up to the parliament to decide whether that government stayed. But at the end of the day it was taken off the table. But that was entirely -

**CHAIR** - Is that a slightly separate matter to the time limit of the seven days of having to -

**Prof HERR** - No, because somebody had to be there to advise the governor, so the governor had to appoint somebody, and the opposition's view was the Labor Party had disqualified themselves from providing a minister and they were prepared to provide a minister. I even have arguments with some of the people who were advisers on that, even to this day, that they feel that they were robbed.

Again, we're a constitutional monarchy. There has to be an adviser to allow the governor to act. And the governor, of course, acts through executive council and does things. But again, it's on advice.

**CHAIR** - But on that, even if the seven-day time limit wasn't there, people might still be making that argument to the governor or in the public domain in relation to the governor that parties ruled themselves out because they said they wouldn't form minority government, therefore you can't contemplate them, that could still be levied as an argument without having -

**Prof HERR** - But there wouldn't be any substance to it at all. By and large around the rest of Australia when minority governments have occurred, people don't make that argument.

**CHAIR** - Right, because they don't have the time limit there that's not putting the pressure on it?



**Prof HERR** - No. They'll make the political argument, but not -

**CHAIR** - Because the governor has to stand aloof from that anyway presumably?

**Prof HERR** - Yes. Indeed, and does, but people don't always see it. That's the point. It shouldn't be the role of a parliament to drag the vice-regal representative into the political fray.

**CHAIR** - In that sense it's not the parliament dragging them in - the parties and the people contesting the election.

**Prof HERR** - No, but the parliament has done it by the legislation.

**CHAIR** - Sure.

**Ms O'CONNOR** - Can I just unpack this a little bit? Because of the seven-day extension under 8B(3) -

**Prof HERR** - No, it's not a seven-day extension.

**Ms O'CONNOR** - It's not an extension, because of the seven-day time period -

**Prof HERR** - Yes, it's a limitation on how long ministers can remain in office after the declaration of the writs.

**Ms O'CONNOR** - Okay, so to be really clear what you're saying is, because you talk about inappropriate and constitutionally suspect - are you saying that the governor should not have any role in engaging with the chief minister or the premier, his chief ministerial adviser following an election in the event that there's no clear majority?

**Prof HERR** - No, it's up to the parliament to make that decision. In every other case, say in 1989, Robin Gray would have remained premier, there would have been no pressure on the governor to enter into a [inaudible] with some of your previous associates to see whether or not they were really going to support the Labor Party or not or how they would deal with supply. The governor didn't need to be involved, shouldn't have been involved. That was a matter that belongs to the parliament.

To drag the governor into it, then people do get annoyed - 'He made the wrong decision.' You know, 'we voted one way and it turned out that he accepted advice.' Well, the governor has to act on advice. He doesn't have to be the umpire as to how the parliament decides to sustain the government; that's up to the parliament to do.

**Ms O'CONNOR** - So, in 2010, what happened prior to the bike ride up kunanyi, as I recall it, was that the then chief minister, David Bartlett, went to the governor and informed the governor that he was unable to form a government. To paraphrase what Governor Underwood said to him was words to the effect that the premiership is not yours to give away, and effectively directed Bartlett to go in there and test his numbers on the floor. Then there was a bike ride up the mountain.

In a scenario where the governor is not having to enter the sort of political fray like that, what would have happened? What should have happened?

**Prof HERR** - Well, what should have happened? I mean, this was tested, if you like, in Canada in the King-Byng affair, where the governor didn't accept the advice of his first minister. And in that case, he invited the opposition to form a government over the protest of the outgoing government, and shortly afterwards, he had to invite Mackenzie back and say, 'will you form a government?'

**Ms O'CONNOR** - Because it was parliament that made a decision to reject his -

**Prof HERR** - Yes, the decision. Yes. Overrode the vice-regal - and back in, you know, 100-plus years ago - well, about 100 years ago now - we could celebrate it next year, come to think it, if we wish. No - you know, the idea was that, you know, it was an embarrassment to the Crown in London; it was an embarrassment to the Crown's representative, and of course he was withdrawn, and it was seen as totally inappropriate that he exercised discretionary authority at a time when parliament had full control of the situation.

**Ms O'CONNOR** - So, in 2010, practically, what you're saying is that all of the elected - the newly elected members - would go back into the House. Who would sit in the premier's chair? Who would sit where? How does it work?

**Prof HERR** - Well, there would have been no change. David would have been sitting in the chair, because he was the premier. He would have sat there, and if the House made the decision -

**Ms O'CONNOR** - To keep him there?

**Prof HERR** - that they had no confidence in him, he would go. But again, we have the situation with Prime Minister Fiame in Samoa, which I'm involved with at the moment. They're not used to having a situation where neither of the two major party groups in the parliament actually support the premier - the prime minister, but none of them is willing to vote no confidence in her.

**Ms O'CONNOR** - Well, she is terrifying and impressive.

**Prof HERR** - Well, also, she has the power to advise head of state. She wants a new election. She wants the people to sort it out, and they're not prepared to go to that either. So, you know. But, parliament does not elect a government. It only unelects a government.

**CHAIR** - So, to clarify then, what played out in 2010 was according to what we would wish to play out, where the governor at the time, when premier -

**Prof HERR** - Not really, because the governor actually did seek the clarification from Bartlett, if he stood by his promise not to form a minority government.

**CHAIR** - Alright, okay. But in the sense that the governor said to then-premier Bartlett, 'if the premiership isn't yours to give away, go - it needs to be tested in parliament' - that was the right message; that was the governor acting as they should, and -

**Prof HERR** - He was saying, 'yes, it isn't up to me'.

## PUBLIC

**CHAIR** - And then, the bike ride and the arrangement with the Greens could have played out before parliament then resumed sitting, and that arrangement could have been in place, and parliament could have disproceeded as -

**Prof HERR** - Yes, and there wouldn't have been any of the controversy that we -

**CHAIR** - So, it was the subsequent further discussions entered into by the governor that was the problematic thing?

**Prof HERR** - Yes.

**CHAIR** - Okay. And so, in '89, then, in that same - with that same thinking, just to clarify: premier Gray would have been sent back to parliament as the premier.

**Prof HERR** - And he was. He - again, we don't - we're not flies on the wall. We don't actually know what was said by the governor to his first minister.

**CHAIR** - Yes. But it would be, 'go back and test it'.

**Prof HERR** - The suspicion then was that Robin wanted a new election, and the governor said, 'no, I'm not sure that's advice I can accept,' and he recommissioned Robin Gray so that he was still premier when he went into parliament, and the result was decided by the parliament.

**CHAIR** - It's interesting. I still find it - I find it interesting to think that this seven-day time line, essentially, is the thing that creates the problem here, only that these conversations wouldn't still occur.

**Prof HERR** - Some of the conversations - certainly the conversations about who has the numbers to form a government would take place, but they would not take place in a way which says, 'I'm going to the headmaster if you don't do what I want,' or 'I've got your promise that you won't do X.' It's not up to the governor to do that; it's up to the parliament to decide whether it has confidence in the King's ministers.

In this case, again, the parliament doesn't - the public doesn't understand this very well, the parliament doesn't elect the ministry. When Julia Gillard replaced Kevin Rudd and all that uproar, 'We didn't elect her to be prime minister.' No, you didn't elect Kevin Rudd either. It was a position of who had the ear of the governor-general and who had a right to that ear, and that was decided by the will of the parliament.

**CHAIR** - More on this or can we move to different things?

**Ms O'CONNOR** - Just one last question on this, on 8B(3). Have you had any conversations with government, Attorney-General? I know you've been advocating for some time.

**Prof HERR** - I've talked about it, as most of you know me, ad nauseam at times when I get concerned about things, of course, but nobody comes up with a reason. The reason I'm in front of you now is to ask you to give me a reason why you want to keep something so stupid in our *Constitution Act*, and if you don't -

**Ms O'CONNOR** - Don't look at us.

**Prof HERR** - I know, but what I'm saying is, on behalf of the parliament, why you would want to do it. You have an opportunity at least, in your report, to recommend that this is something that would help promote stability after an election and indeed less instability prior to elections.

**Ms O'CONNOR** - What do you think would be the impediment to repealing that subsection?

**Prof HERR** - None.

**Ms O'CONNOR** - Politically is there something there that we're not picking up?

**Prof HERR** - No, no, it's just an act of parliament.

**Ms O'CONNOR** - But why wouldn't government have done it?

**Prof HERR** - Because nobody likes change. They find it, you know, they think there must be something under the rock. To write what I've done for you and I did it in the article that I quoted from. I went into the bowels of law school, I went back and it was a hard thing to find out that there was nothing under the rock other than greed over who got paid what.

**Ms JOHNSTON** - Richard, do you think that, if we were to make these changes, it would increase transparency and perhaps the level of informed public debate around elections and minority governments, and the impact of minority governments, and the scaremongering around that? And then, post-election, the transparency about what deals could be done to form government? I mean, if you had to come back onto the Floor of the parliament and make your call there. Do you think that would enhance it?

**Prof HERR** - No, no, I mean the campaign would be the same and people will make stupid promises, including 'I won't do deals,' but they won't be able to say -

**Ms JOHNSTON** - Won't be the stick, to go with it.

**Prof HERR** - No, no, it won't be, 'I am going to demand that the governor enforce your promises.' That's not the role of the governor, he shouldn't be involved in it, and he was in 2010, less visibly in 1989 because people were less aware of the seven-day thing then than they have become subsequently, but Government House is aware of it. I get reminded if I forget to remind the public in any public commentary, 'Don't forget,' and I say, 'No, alright,' because they don't want to be involved in it and they shouldn't be.

**CHAIR** - As I said, I believe it would also be something that potentially becomes problematic when there are negotiations with potentially new independents or minor parties who have been elected and may be talking about forming a minority government and could be in their naivety, pressured into doing that in a quick way, unnecessarily quick way because of this limit.

**Prof HERR** - Or a governor who is somehow inexperienced enough to think that they ought to do as Bennett did and call everybody and individually and get promises from them.

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**Ms O'CONNOR** - Was that 1989 was it?

**Prof HERR** - Yes.

**Ms O'CONNOR** - Everyone from the government or everyone elected?

**Prof HERR** - No, only the five Greens. Again, I wasn't a fly on the wall, but it's my understanding that he requested that - and he shouldn't be the guarantor of - what was his response going to be if they lied to him? It's silly; it shouldn't have happened.

**CHAIR** - Can I move on to another area, please?

**Prof HERR** - Sure.

**CHAIR** - I know that you've just sort of put some other matters into your submission. Just briefly, and I appreciate that you were just pointing us to them, but I did want to pick up on one and talk about it in relation to some other conversations we've had today. You mentioned about various aspects of the role of postal voting plays in the course of the election, including the length of time allowed for the vote, the timing for counting the ballots and relationship of timing of party launches to casting an informed postal vote.

We've also had conversations about the shift to greater pre-polling numbers now where people are voting early, and potential problematic aspects of that because of the idea that we have an election on a particular day and everybody is an equally informed voter on that day to cast their ballot. Therefore, if people have done it two weeks earlier, things have transpired in the meantime. Could you put a little bit more comment around how you see that and whether there's an argument to be made for reducing pre-polling timeframes or even dispensing with pre-polling arrangements altogether?

**Prof HERR** - I don't think pre-polling is necessarily a bad thing. I think most of you possibly know my wife is now legally blind. She's also bedridden. She's not going to get down to a polling booth. She needs to absentee vote, or whatever.

**CHAIR** - Postal vote, in a sense.

**Prof HERR** - There will be other people who are abroad working, and need time, and shouldn't be disenfranchised. I don't have a problem so much with pre-polling -

**CHAIR** - That's more postal voting, right? Whereas pre-polling is where we open the places for people to go and vote in person early.

**Prof HERR** - I do have a problem with that, in the sense that - and I linked it in part to the idea of party launches being virtually the day before the election. I know there are supposedly financial reasons why this is useful to political parties, and don't - donations and the launch - but again, I don't know that we should want to cooperate and make that kind of opaqueness part of the electoral process.

I didn't have the time to reflect on this more deeply, but I guess if there's going to be a party launch, I think it should be at least far enough in front of the election that it covers the period of time when any pre-polling is allowed, and also postal voting. At least if parties or

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independents have nailed their flags to the mast, that, in the argy-bargy of campaigning, as a consequence of those promises and assessments of how those promises will work out, people will get a clearer idea - that it's unavoidable. You're not going to be in a position where you can say to everyone, 'We insist that everybody know exactly all of what you might think on election day before you cast a postal ballot or a pre-poll'. But at least we should have it so that there aren't black swan events coming in that are deliberately created to mislead people. I would be in favour of - pre-polling simply could be reduced. I don't think it needs to be as long as it seems to be. I've not used it so I don't know how long it goes.

**CHAIR** - Just to clarify your point there around launches, what you're assuming in pointing to launches is that at a launch event, the full suite of policies and promises that a party's making is publicly available at that time?

**Prof HERR** - Yes, should be.

**CHAIR** - Therefore that's what you're pointing to as having been put into the public domain -

**Prof HERR** - That's the manifesto they're putting to the public for the public to vote on.

**CHAIR** - And that should occur prior to the timeframe in which people begin casting their votes.

**Prof HERR** - Yes. Also, whatever financial advantage goes to holding the launch. I've not fully investigated that, I gather that it does affect the financing, whether that's at a Tasmanian level or just at the Commonwealth level, I'm not sure. If there is any financial advantage, that shouldn't accrue to being, as I say, trying to prevent transparency about what you're -

**CHAIR** - Presumably our first concern should be about fidelity of our electoral processes.

**Prof HERR** - Yes, that's it.

**CHAIR** - Can I ask, then, about how we weigh up - because what's put to us is, of course, we want to ensure, to the greatest extent possible, accessible voting. So, that's one principle we're looking to uphold. And then, we're also looking to ensure the principle of an informed voter casting a vote on election day. So, in some sense, we're looking to balance those two important principles in offering pre-polling as an option, because it would be seen to be providing greater accessibility for some. Could you make a comment about how we balance one of those against the other, given that they're both fairly important principles?

**Prof HERR** - I guess - and I thank you for making sure that I concentrate on the difference between postal voting and pre-polling. Postal voting is going to be determined by what the Australia Post tells us they can do to get -

**CHAIR** - The practical.

**Prof HERR** - And we do not want to, as all of us have been on election night, sitting there trying to read the entrails of what the postal bag is going to carry. You know, it's just -

it's frustrating, you know? Especially when there are larger numbers of them, it's - But, we do have to acknowledge that.

Pre-polling seems to me, in some ways, the kind of convenience that allows people to exercise a civic right at their convenience, but that - It shouldn't be a duty that they feel they have to do because of compulsory voting. And so, if they can get it off, out of the way on their way to work or whatever, I think it ought to be there for probably a more restricted period, so that if you're working on Saturdays or you're going to be somewhere where it's inconvenient to - fly fishing, or whatever - you can do it, but not necessarily for such a long period of time.

I mean, it must - I don't know what the commissioner would say about the cost of keeping these pre-polling booths open, but there is a security issue; there is the additional problem of potentially people voting twice, or something by - trying to reconcile - It does seem to me that it adds integrity issues by having it open for too long.

**CHAIR** - More moving parts. So, you're pointing to potentially fulfilling - having that available as an option, more for where there's a necessity, not necessarily purely for a convenience.

**Prof HERR** - Yes.

**CHAIR** - And then, pitching the length of it to that -

**Prof HERR** - I mean, the point is that if you, as you say, need to vote and, for a variety of reasons, you can't, postal voting has to be made available as conveniently as possible and whatever we might need to do to make it faster. But, the convenience aspect I'm less sympathetic to because it seems to me it - well, I don't know. I mean, I guess you can argue if people find it convenient they do it more freely, but I'm not sure that - again, if it becomes too far separated from the campaigning and the information of the campaign, it's - you know, as I said, I haven't gone as deeply into the -

**Mr GAFFNEY** - Just picking up on that point, Richard, it seems our whole life now is about convenience, and yet here we have a process that allows people to go there in their own time, two weeks early, so they don't have to line up on a Saturday for ages to be able to vote. And so - and I have to say that a lot of people are not informed whether we make them vote - stay there to the Saturday of the election or not - whether we allow them to go there two weeks earlier or one week early. So, I think you're damned if you do and you're damned if you don't.

**Prof HERR** - Well, having created the capacity, changing it will - but I do think there are good reasons, at least, why it could be compressed to -

**Mr GAFFNEY** - One week?

**Prof HERR** - Yes. Because I can't understand why, if you need more than a week, you can apply for a postal ballot.

**CHAIR** - As you say, potentially with some sort of proviso that platforms need to be in the public domain prior to that or launch as a help prior to that.

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**Ms O'CONNOR** - Can I just take you back to something you said earlier, Richard, about black swan events in an election campaign? What kind of thing in a campaign could be so disruptive that it would be a black swan event? And how does any legislation or regulatory process mitigate the risks of that?

**CHAIR** - October surprise in the US.

**Prof HERR** - Well, the tamper, something that a government can manufacture to create an impression that its policies are superior to the opposition. Because oppositions have a hard time creating black swan events. Governments may be the victim of black swan events such as the market crashing or something like that, but that's what we normally mean. The difference between a manufactured one and an act of nature, as it were.

**Ms O'CONNOR** - That ties in potentially with the use and abuse of information or the promulgation of disinformation.

**Prof HERR** - And that's a real problem with social media.

**Ms O'CONNOR** - That's where I was going next. With social media, and you talk about the use and abuse of social media with regard to breaches of the electoral act, especially defamatory claims, negative advertising and the like, many of which could draw legal consequences if promulgated through mainstream media platforms.

This is such a massive issue, I think, for democracies around the world. Then we've got artificial intelligence, the layer over the top of that which the Turing Institute in England is providing some really good intel and advice on.

What are your thoughts on how you respond to this at a state level?

**Prof HERR** - Well, I certainly think that if it's defamation to put it in the newspaper, it ought to be defamation to put it into social media. And yet, we see the effect of trolling, misinformation, lying, the damage it does to people's lives and yet it's still inadequately regulated.

We do have mechanisms for taking Rupert Murdoch to court for what he says in his newspapers, but not what he does through social media platforms. There's that imbalance in terms of the ordinary citizen or parties or individual candidates and so forth. We got to come to terms with it in some way. I know at the state level we're not going to deal with all of the social media issues.

I did chair a citizen's committee after 1989 with Doug Lowe and Angus Bethune on the citizens who felt outraged at - you can imagine which community groups it was, but outrage that Robin Gray had been displaced by this ragtag group of people who didn't adhere to the conventions as they saw them in terms of honesty in advertising.

**Ms O'CONNOR** - They said that about who at the time?

**Prof HERR** - Well, I mean they never said - when they came to me, they said we want to see legislation that says that candidates have to adhere to their promises. But the point is, we had to explain that you couldn't. It was what we then drafted as a code of ethics for campaigns.



I think that was part of what led to the one that was adopted in parliament here. But it's still an issue. It's an issue. People say they don't believe politicians, but that's not true. They only want to believe the politicians they like and everybody else is lying.

**Ms O'CONNOR** - Can I ask, you've been involved in and observing Tasmanian elections here for at least four decades?

**Prof HERR** - Yes.

**Ms O'CONNOR** - You'd have seen an enormous amount of change in the way that campaigns are conducted. I'm interested in your observations about the influence of social media on campaigns, on debate, during campaigns and on outcomes.

**Prof HERR** - Oh dear. When I started back in - I guess it must have been about 1974-75 - members of parliament held surgeries and they'd go around to various pubs and they'd have notice in the newspaper, 'I'll be at this pub at such and such a time, please come and talk to me and tell me what your issues are', and there was very much personal issues. Almost invariably, I would be door knocked every election and I lived at the top of a rather steep hill, so good on them for making the effort, that was good. I hardly ever get door knocked now. A few people do, but it's not typical. The whole nature of campaigning is focused on in the first instance persuading the true believers to stay faithful and then blackening the other side.

**Ms O'CONNOR** - It's a messaging thing now isn't it? The campaign, the focus is often on the messaging.

**Prof HERR** - The whole thing and that of course costs money, and that's a big difference today. As you all know, it costs a lot more money.

**CHAIR** - Not for an upper House election.

**Prof HERR** - No, it doesn't, but that had its own consequences as well, as we know from the lower House when overspending can be an issue. But no, there is an advantage, but even there not all resources are monetized. If you have an enthusiastic core of volunteers who go out and spread the message, it doesn't count as a campaign cost. That was actually the complaint against the Greens in the early period, that the Greens had so many people out door knocking for them -

**CHAIR** - How dare they have supporters.

**Prof HERR** - Yes, but that was the complaint the two major parties had. You get all these enthusiastic volunteers and we have to pay for people.

**Ms O'CONNOR** - So sad.

**Prof HERR** - Well, there you go.

**Mr GAFFNEY** - Just a question, around election times there's lots of community grants and subsidies and offerings to a wide range of groups. I'm just wondering what would be your thoughts about as soon as elections called that that type of media coverage or that action has to be stalled, put into caretaker mode, because the way I see it, you see the Premier saying that

they've given so much that so many thousands of this and right next to the Premier on the TV is the candidate for that election, which is something an independent or somebody could not afford and that 30 seconds on the TV is worth thousands of dollars. How could we think about alleviating or minimising that opportunity for unfairness?

**Prof HERR** - Of course the law is against it. The law says you can't bribe people to vote. It's just that people make exceptions for political promises, but the law is very clear. You can't bribe people to vote and if you promise them a sports ground or special programs for the school or whatever and this is where I need your guidance because I have seen and I again, I haven't followed it up, I've been involved elsewhere, but I believe that those discretionary grants can be delivered after an election without the same degree of scrutiny that occurs in parliament.

**CHAIR** - That depends. It depends what mechanism they use to fund it. But, I mean, I think, if they go through a state budget process, obviously that has scrutiny. But if it's done through some other mechanism, maybe less.

**Prof HERR** - Yes, the Premier's grounds, or whatever. I miss Bryan Stait here very much. If Bryan knew all of the internal -

**CHAIR** - We all do.

**Mr GAFFNEY** - But we have to have some - there has to be some period where a government of the day can come out and say, 'Look, here's \$250,000 to the Creek Road netball courts -

**Prof HERR** - Yes, of course, but it should go through a needs assessment.

**Mr GAFFNEY** - It'd go through that assessment, but it's the announcement. When do you have a period where that, before an election, where that must stop, I suppose? Do you see what I mean? Like, when the writs are -

**Prof HERR** - Well, I don't know if you can control it that way. I mean, the fact is, you should be able to say, 'Don't believe any promise', because they may promise it, but it's only a promise, and you can't be - but this is -

**CHAIR** - Yes. I guess the reality is when the election is called, you no longer have a government of the day. You have candidates running for election, so their election promises from that point on.

**Prof HERR** - No, you do have a government of the day.

**CHAIR** - Well, you do, but what I mean is that there's election promises then made from that point forward, rather than announcements of a government.

**Prof HERR** - Yes, that's right. The caretaker mode should prevent any policy initiatives or actions that ordinarily would require parliamentary support. Yes. But I believe that's already -

**CHAIR** - And I guess the difference is - and this is where Member for Mersey and I would experience this differently - is when we have our upper House elections come up, there

is, of course, a government operating across the whole time of that election period, and yes, they can have candidates of their same party out beside them.

**Prof HERR** - And we saw it, yes. And they use government cars to take a minister to an event, and there's the candidate in the ministerial car.

**Ms O'CONNOR** - Oh yes, we've seen that.

**CHAIR** - I'm just going to put on the record right now, because I am in an election period for an upper House election, and I don't want to be seen to be using this opportunity to comment on this situation - so other members might ask questions about it, but I'm not going to ask questions about it.

**Prof HERR** - No, no. But I'm making the point that I've seen it and I object to that. You know, that is, again - well, who's the minister for Transport for New South Wales who's no longer the minister for Transport?

**Ms O'CONNOR** - Barilaro.

**Prof HERR** - No, I meant - you know, for using ministerial - for not just herself, but for her friends. You know, and that's the case with - you know, if ministers take a candidate to a venue, that's a misuse of ministerial resources. It shouldn't be -

**Ms JOHNSTON** - Can I perhaps extend from my last question? And certainly, there's a caretaker mode, where we know there's an election called. One of the challenges we've had for the last two elections is there's been elections called quite early, and it's the government, obviously, who know exactly when they're going to call election. And we had the situation where they can, for a period of a couple of months, go out on a spending spree and provide grants to community groups and things like that quite legitimately, because it's not a caretaker mode, knowing full-well that on next date coming up very soon, they intend to call an election.

Do you have any thoughts around, you know, fixed terms for governments, parliaments? How we can avoid the situation where it's not election bribery because it's not happening during a caretaker mode, but it's with the full knowledge the government has that there's an election coming up and that the intent is the same?

**Prof HERR** - Well, I don't know that you can ever control that entirely and having it a fixed term, all the parliaments that I know of that have fixed terms have built in with that it can't be held within six months or a year of the scheduled date, and they always allow a little bit of wiggle room there to say -

**Ms JOHNSTON** - Fixed term is not quite 'fixed'.

**Prof HERR** - Yes. It can't be quite fixed because things come up, and whatever. And, of course, from parliament's point of view, it does go against the idea that parliament can unmake a government at any time it wants, you know?

**Ms O'CONNOR** - Is there no third way, though, where we have a fixed term but also retain parliament's power? So, other than in the event that parliament expresses or brings down the government, the election is to be within four years or something.

**Prof HERR** - Yes. The Samoan Constitution has precisely that kind of thing.

**Ms O'CONNOR** - Is that the one you helped to write?

**Prof HERR** - Sorry?

**Ms O'CONNOR** - Is that the one you helped to write?

**Prof HERR** - No, I didn't help - the Samoan Constitution? No, I didn't help write it. I've just been involved in commenting on some of the changes, and so forth. And that's part of the problem at the moment, that I would have to go off the record if you want to know a bit more how that worked, but I can't talk about that.

**CHAIR** - That's okay. I think that covers it. Is there an argument against a fixed-term election that you think is valid? Other than, of course, it would need to have that provision that if a government can't hold the floor of parliament, obviously, then that's something that's going to be sending them to election.

**Prof HERR** - No. In a way, I wouldn't mind a fixed-term because it then says to - but then you get the situation again, which without naming particular countries, where they have a fixed term and the mechanism for pulling the trigger would require parties to undertake actions that they don't want to take. That's why - I wish I could tell you more about it.

**CHAIR** - So, you could have a government in a somewhat ridiculous situation dragging on through to the end of the fixed term because the trigger that would bring it earlier isn't politically palatable.

**Ms JOHNSTON** - So an opposition wouldn't pull a trigger.

**Prof HERR** - In Norway's case, on one occasion in Norway, I remember when I was working on the Norwegian Storting, the two major parties had promised not to govern unless they - it was something ridiculous like 35.8 per cent of the vote and the other one was something similar. Neither one of them crossed the threshold, so it was the crossbenchers, who only had about a third of parliament, who formed a government. But that was the parties behaving with the integrity of adhering to their promises. Now, it wasn't quite fixed term, but there had to be a government, so the crossbenchers, the small parties, got together and cobbled together an executive and formed a government that lasted nearly the whole length of the parliament.

So, if you're prepared to have that situation - and I don't mind that situation, that's fine. But I think the public by and large will be on the other side, 'What the hell is going on here?' You know.

**CHAIR** - Are there areas before we wrap up?

**Ms O'CONNOR** - Well, just one, maybe one area we haven't touched on is electoral donations. Not much. We haven't touched on it much. The parliament's passed legislation which comes into effect from 1 July this year with its \$5000 donation disclosure threshold, which hopefully parliament will revert to \$1000 donations disclosure threshold when we get the Greens bill through the Legislative Council. Given that there's been some moves towards

modernising Tasmania's electoral laws, even though they're still arguably the sort of the weakest, have you formed a view on the information that you have available about whether or not the new legislative arrangements will provide stronger transparency?

**Prof HERR** - Well, I would ask you, when does the reporting have to be made? Is it instantaneous?

**Ms O'CONNOR** - No. So, at the moment that's the problem. That was where we met a blockage in trying to get real-time disclosure into the act. It's broadly supported except for you can imagine where. At the moment, the legislation requires a donation, when it comes into effect on 1 July - it will require a donation to be declared within a month of receipt, but there's nothing for the last week of the campaign, for example.

**Prof HERR** - No. Well, I would much prefer -

**CHAIR** - In an election.

**Ms O'CONNOR** - That's correct, isn't it?

**CHAIR** - Outside election periods, the current one is six monthly.

**Ms O'CONNOR** - Yes, but on the 1 July, it'll come in. It'll be a month.

**CHAIR** - No, under your bill it is, but under the current one that's about to come into effect.

**Ms O'CONNOR** - No, it's not. Anyway.

**Prof HERR** - What I can say without exposing my ignorance of where the bill is or the act is, I am less concerned about the \$1000 and \$5000 issue than I am with the immediate reporting. You don't want to frighten off relatively small donors, who don't necessarily want to be out. I'm thinking of, for example, here Judge Merchan in the US, his daughter - or he gave a \$20 donation to the Democratic Party about 20 years ago or whatever it was, a long time in the past, and yet Trump kept bringing it up as you know, 'This shows you're a Democrat', and so on.

People don't necessarily want to be outed as a support of a party when they want to support a friend who's happening to be running or things like that, you know. I think that the threshold ought to be at least low enough that people can feel they can give and not necessarily have to declare them their political preferences. I think that, at a certain level, the key is to have it instantaneous. So, whether it's \$1000 or \$5000, the critical thing is that it be clear and as we saw in the campaigning, when a lot of money rushes in at the end of the campaign and you can buy television or media or all sorts of things, nobody knows where it's coming from and that's, again, the sad thing with the electronic, with the AI and the internet, social media and so forth.

I made an inquiry about going to a particular conference in the South Pacific a couple of days ago and the next time I opened my web account, there was a notice: you can go to that country for this price.

Alright, if people are targeting you in a situation which is, well, essentially commercial, but you know, they can do it in ways that actually reach people who - another example that really bothers me is the targeting of the transgender issue.

There is a former student of mine, senior officer in the Fiji military. I asked her to come to dinner as I was passing through and she brought her granddaughter and the granddaughter is a mid-teenage girl, and she said, 'What do you think of Trump?' I said, 'Well, look, I'd be more interested in what you as a young person think' and she says, 'I think he's so godly because he is opposed to the transgender'. I said, 'Where in the Bible did you get that from?' She got it from social media, totally unrelated, and yet it was affecting - and I mean, if she had been eligible to vote in the US, she would have certainly voted, and that is -

**CHAIR** - The targeting that can occur in that space is very powerful.

**Prof HERR** - Very quickly, yes.

**Ms O'CONNOR** - Also, it's a hallmark of fascism to single out and target a minority.

**Prof HERR** - Oh yes, no, certainly.

**CHAIR** - I'm mindful we're drifting a little, but it's been a really good conversation.

**Prof HERR** - No, no, but I mean, these are broadly part of -

**CHAIR** - They're relevant issues, yes.

**Prof HERR** - Yes, and you can't solve them all and you can't solve the fact that governments have more power than oppositions or crossbenchers or whatever.

**CHAIR** - But we now have a Joint Standing Committee on Electoral Matters. So, at least we will be contemplating these things in a regular way, which I am very pleased about.

**Prof HERR** - And hopefully section 8.3 -

**CHAIR** - We have heard that loud and clear. We will not be able to avoid at least considering that.

**Prof HERR** - No. Thank you so much.

**CHAIR** - Can I please just say that, before we wrap up, as I advised you at the commencement of your evidence, what you said to us here today is protected by parliamentary privilege. Once you leave the table, you need to be aware that privilege does not attach to the comments you may make to anyone, including the media, even if you're just repeating what you said to us here. Do you understand that?

**Prof HERR** - I fully understand that.

**CHAIR** - Excellent. So, thank you very much for your time here today and we appreciate it.

## **PUBLIC**

**Prof HERR** - Thank you very much for persisting, staying on with your inquiry long enough for me to get here.

**CHAIR** - Indeed. We'll end the broadcast.

**THE WITNESS WITHDREW.**

**The committee adjourned at 3.59 p.m.**