

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Electoral Amendment Bill 2019*

*\*check Hansard for delivery\**

Madam Speaker, I move that the Bill now be read a second time.

This Bill is a preliminary step in the review of the Tasmania's Electoral Act. It proposes a first tranche of amendments to the *Electoral Act 2004* to address issues arising from delays in postal delivery times and makes other changes to improve the operation of the Act. The Bill also removes the ban on newspaper advertising, commentary and reporting on Election Day.

Following the State election last year, the Premier announced on 3 May 2018 that there would be a review of Tasmania's Electoral Act and associated laws to be jointly conducted by the Department of Premier and Cabinet and the Department of Justice.

Terms of Reference for the Review are:

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

The Review is to be guided by two principles – protecting freedom of speech, with note to Constitutional implications and minimal cost to the taxpayer.

The Premier indicated that an Interim Report would be released within six months of the Review's commencement with a Final Report to be provided within 12 months. The Review commenced in June 2018 with a call for public submissions on the Terms of Reference. The Interim Report was released for public consultation in December 2018.

The closing date for submissions on the Interim Report was initially set at 18 February 2019. However, following the release of the Interim Report, the High Court handed down a decision (*Unions NSW & Ors v NSW*) which was directly relevant to aspects of the Review.

An addendum to the Interim Report was released on 18 February 2019 providing an overview of the High Court decision and posing further consultation issues for feedback. The consultation period was extended to 15 April 2019 to allow the High Court decision to be considered appropriately by stakeholders and further feedback to be provided.

As indicated in the Interim Report, it became apparent during the early stages of the Review and through the consultation process that there are a number of reasonably straightforward technical and administrative changes that could be made to modernise and improve the operation of the Act and electoral system. It was recommended in the Interim Report that

these amendments should be made as soon as possible to commence prior to the next State elections – which are the upcoming Legislative Council elections in May this year.

The Government has accepted those recommendations and is implementing them through this Bill. At this point, I would like to emphasise that this Bill is only a first tranche of reforms with the full Review not yet completed. As such, it only contains administrative and technical changes. It does not propose any reform in relation to more complex policy issues such as disclosure of donations and regulation of third parties. These matters are still being considered by the Review and I expect that there will be recommendations in the Final Report to be provided to the Government later this year.

I will now provide some detail on the proposed amendments in this Bill.

Firstly, there are a number of amendments to address difficulties arising from recent changes to postal delivery times. These difficulties were raised by the Tasmanian Electoral Commission (the TEC) in its submission to the Review. The TEC observed that in the 2018 elections it experienced longer timeframes than estimated by Australia Post in the delivery of postal vote applications and postal votes making it difficult to meet the timeframes set out in the Act. It noted that using priority mail services would impose a significant additional cost on taxpayers.

A key change in relation to postal delivery times relates to postal vote applications. Currently, the Act requires a postal vote application to be lodged by 6.00pm on the second day before polling day (that is the last Thursday before the polling day) if the postal vote is to be sent within Australia, and 6.00pm on the fourth day before polling day (that is the last Tuesday before the polling day) if the postal vote is to be sent outside Australia. For a postal vote ballot paper to be counted, it is to be marked and returned by delivering it to a polling place or posting it to the returning officer before the close of poll. As noted by the TEC, if a postal vote application is lodged on the final Thursday before the election, it is unlikely that a postal vote will be delivered prior to polling day to anywhere outside of Hobart which means that the elector will not be able to cast their vote in time.

Under the Bill it is proposed that the deadline for the lodgement of all postal vote applications be brought forward to 4pm on the eighth day before polling day. This timeframe was recommended by the TEC and will mean that all postal vote applications will be required to be lodged by 4pm on the Friday a week before the election. This should allow the TEC to use regular mail services to deliver postal votes within the State, thereby minimising costs.

Other proposed amendments to timeframes in the Act to take account of longer or delayed postal delivery times include:

- Including a timeframe for applying for replacement postal vote information consistent with the postal vote application timeframe;
- Extending the period to lodge, post or send a nomination to contest a recount from 10 days to 14 days;
- Extending the minimum period between nomination day and polling day from 15 days to 22 days; and
- Clarifying the time allowed for postal responses to a notice of failure to vote.

In addition to the postal timeframe amendments, the Bill proposes some minor technical and administrative amendments to improve the operation of the Act and electoral system. Again, these changes were suggested by the TEC.

The Bill makes an amendment to section 127 of the Act to allow postal vote information to be made available for viewing at the TEC office. Currently, the Act provides for this information to be made available at the office of the returning officer. However, returning officers are generally situated in short-term premises which are vacated shortly after an election. It is more practical for this information to be made available at the permanent office of the TEC.

The Bill also includes amendments to modernise various provisions in the Act so that information and documents can be transmitted by electronic means such as email rather than by facsimile. Along similar lines, there are also amendments to TEC meeting procedures to allow the Commission to determine an electronic method by which a proposed resolution may be distributed to and voted on out of session by members. The Bill also allows a returning officer to delegate a number of administrative duties to election officials.

A significant amendment in the Bill is the removal of the ban on newspaper advertising, reporting and commentary on Election Day. Section 198(1)(b) of the Act prohibits a person from publishing or causing to be published in a newspaper an advertisement for or on behalf of, or relating in any way to, a candidate or party on the day fixed for polling. It also prohibits the publishing in a newspaper of a matter or comment relating to a candidate or a question arising from, or an issue of, the election campaign. This provision was specifically raised in the Terms of Reference for the Review as it has caused concern in the community. It has long been seen as being anachronistic and an unfair fetter on the ability of newspapers to report or comment on election issues and candidates on Election Day.

During consultation on the Terms of Reference for the Review, there was strong support for the removal of this provision – particularly in relation to the restriction on newspaper reporting and commentary. The general consensus was that the ban is outdated and unfairly penalises newspapers given that it does not apply to other forms of media such as online and social media platforms. No other Australian jurisdiction prohibits newspaper commentary and reporting on Election Day. It was therefore recommended in the Interim Report of the Review that the ban be removed by the repeal of section 198(1)(b)(ii), with this amendment to be included in the first tranche of reforms so that it can come into effect prior to the Legislative Council elections coming up in May. During consultation on the Bill, there was feedback that the ban on newspaper advertising on Election Day was also out of step with other states and territories and because of the repeal of section 198(1)(b)(ii) it was decided to remove this as well, by repealing section 198(1)(b) in its entirety in fairness to all candidates.

Madam Speaker, I reiterate that this Bill is very much a preliminary step in the review and reform of Tasmania's electoral laws. Many other more complex issues were canvassed in the Interim Report for the Review including disclosure of donations and regulation of third parties. These issues were directly raised in Terms of Reference 2 and 3 of the Review. Consultation on the Interim Report is due to close on 15 April and the Final Report is due later this year. I expect that the Final Report will make recommendations for further reforms.

Madam Speaker, I commend the Bill to the House.