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## **Submission to The Select Committee on the House of Assembly Restoration Bill 2018**

1. This submission addresses the central proposal of the House of Assembly Restoration Bill: the restoration of the membership of the Tasmanian House of Assembly to 35 Members. The Restoration of the House of Assembly is long overdue. Its continuance in its present truncated form has degraded both the quality of Government and the confidence of the Tasmanian people in their democratic representation. This is of great concern given the unique democratic flavor of Tasmanian political culture.
2. The Tasmanian Constitution Society notes:
  - (i) The observation of Andrew Inglis Clark (after whom the electorate of Denison is to be re-named) as long ago as 1887 warned “power wielded by a majority may be used as oppressively as if it were exercised by a despot or an oligarchy and the doctrine of the natural and fundamental rights of the individual is as condemnatory of the oppression in the one case as in the other”. As a solution Clark recommended: “A system of electing representatives which will ensure the presence in the legislature of representatives of all opinions”. This was the essence of our democratic Hare-Clark electoral system which was so severely damaged by the reduction of 1998 (see Andrew Inglis Clark ‘Why I am a Democrat’ re-published in *An Australian Democrat, The Life and Consequences of Andrew Inglis Clark*, Marcus Hayward and James Warden, eds. Hobart 1995, p. 204 below).
  - (ii) After its introduction in 1909, the Tasmanian Parliament evolved and expanded. In 1959 a Parliamentary Select Committee recommended that the House of Assembly membership be increased from 30 to 35 seats, “because the population of the state has nearly doubled and the functions of the Government have increased enormously”. The population (and revenue base) was then 350,000. The Tasmanian Constitution Society notes this was a reasonable number from which a cabinet might be selected and an effective back-bench maintained.
  - (iii) Following the Franklin Dam dispute and the emergence of the Greens as an effective minority party, the size and composition of the House,

became a matter of some controversy, and arguments for ‘majority government’ (warned against by Andrew Inglis Clark, see (i) above) emerged. As a result, in 1984 an ‘Advisory Committee on the Proposed Reduction in the numbers of Members elected to both houses of Parliament’ (see *Report of the Advisory Committee on the Proposed Reduction in the Number of Members to both Houses of the Tasmanian Parliament to the Premier The Honourable Robin Gray M.H.A. presented by Mr Albert Ogilvie L.L.M., Sir George Foot, Sir George Cartland*, published by the Parliament of Tasmania 1984, hereafter the Ogilvie report) was convened, but it reported against any reduction declaring “that it would not be in the best interests in the state of Tasmania for a reduction of the numbers of Members of Parliament to be included among measures to be taken to economise in the cost of Government to the state”. In an important section of this report entitled ‘The Public and the Parliament’ the Committee reported: “that regular contact between a Member of Parliament and his or her constituents is of prime importance. In addition to contact with the public on Parliamentary and other public business or on personal and electoral matters, Members of Parliament mix with the public in performing many public functions within the community in attending and officiating at cultural, charitable educational, sporting and other activities. A smaller number of Members of Parliament would reduce the opportunity for this varied and useful interaction between the public and its representatives. We believe that any significant reduction in the present number of Members in the Tasmanian Parliament could have an adverse effect on the on the nature and quality of public influence on Members Parliament” [Ogilvie Report ps 21-22].

- (iv) There the matter rested, with no serious attempt to disturb the proper constitution of the House of Assembly until the extraordinary events of July-August 1998 when the minority Government of the day, with support of the major opposition party, reduced the House of Assembly to 25 seats, and immediately held an election (without any constitutional consultation with people on this radical change). The result propelled the former opposition into majority Government and all but eliminated the minority Green party. The episode, which could be characterized as a majority coup, greatly surprised all Tasmanians and alarmed many. This was a reduction of 29%, though of course the population had increased greatly since 1959 (440,000 –it is now 515,000). The Parliament has been functioning at only 71% capacity since, to the significant detriment of the governance of Tasmania.

Long after the event (*Mercury* 3 May 2014), the Premier of the day in 1998 (Mr Tony Rundle) explained: “By mid-1998 I judged our reform agenda was being thwarted by the hung Parliament and nominated August 29 as election day. I recalled the House of Assembly, moving that the House of Assembly be reduced by 10 seats”. The Tasmanian Constitution Society holds that no programme of reform, no matter how well intentioned, put forward by any party, can justify a near 30% reduction of democratic representation in a modern democracy (in the event the

apparent objectives, the renewal of Government and the guarantee of majority Governments, were not achieved.)

- (v) Over the following 12 years, the consequence of this ill-judged truncation of Parliament were all too clear, both with increasing dissatisfaction of the public with the performance of the politicians (as foretold by the 1984 Committee) evidenced by recurring cries of “no more pollies” whenever restoration of Parliament was mooted, and increasing resignations/failures of over-worked ministers: four falling from office in 2009-2010, and recently two in February 2019. It is notable that the latter resignation enforced a deferral of the commencement of Parliament as, in the shrunken state of Parliament, Government could not function until a new member could be commissioned.
- (vi) In 2010, a year of both an election and a hung Parliament (despite the reduction) it was clear a near crisis had emerged in the parliamentary administration of Tasmania and the leaders of the three major parties – Labor, Liberal and Green – signed on 2<sup>nd</sup> September 2010, “An Agreement for Parliamentary Reform”, the prime object of which was “that the House of Assembly be restored to 35 Members with seven members from each of the State’s five electorates” and an Independent Appointee, Professor Peter Boyce AO, was commissioned to report further on the matter. This was an exciting period in Tasmanian politics when genuine reform was in the air. The then Opposition Leader, and present Premier assured the Tasmanian Constitution Society, “The Tasmanian Liberals are absolutely supportive of returning the number of Members in the House of Assembly to 35 and we will make every effort to ensure the restoration achieves the intended positive outcome for [the] Tasmanian community” (17 June 2010). The Premier of the day (Lara Giddings) in response to our petition on the matter (petition No. 15 of 2011), declared, “The smaller number [of members] has resulted in a reduced representation of the Tasmanian community and fewer members to draw on for Cabinet and Parliamentary purposes” and also that “There is now a general feeling that the House of Assembly is too small and the numbers of Members should be increased”.
- (vii) Despite these promising developments, the agreement for Parliamentary reform collapsed, the Liberals withdrawing from the agreement in February 2011, and the Labor party following shortly afterwards believing reform was not possible without a “tripartite agreement.”
- (viii) Nevertheless Independent Appointee Professor Peter Boyce AO, did still report to the Parliament “that an overwhelming majority of submissions received by the Independent Appointee favoured a restoration of the House of Assembly to 35 in time for the next state election” (*Review of the Proposal to Restore the House of Assembly to 35 Members* Emeritus Professor P.J. Boyce AO Independent Appointee, Laid before the House of Assembly on 8 March 2011, p.17).
- (ix) Since then the matter has been unresolved and Tasmania has continued to

suffer from an attenuated Parliament which has been reduced for the convenience of major political parties keen to avoid competition from minor parties, and disinterested in the democratic ethos of the Hare-Clark system. Perhaps this sad situation is best summed up by the senior politician and former minister, David Llewellyn M.P. who was reported in “House of Assembly Notices and Orders of the Day” for May 18 2011, p.607 as having commented on ABC radio, 13 May 2011: “... I could admit now, I guess as being part of the government back in 1998 or 1997 in conspiring ... between the Liberal party and the Labor party to reduce the size of Parliament on the basis that it would take more percentage from minor parties to actually win a seat ... And I think that was wrong. I admit it was wrong. And I think we really should do something about that.” This was a view which was reinforced by the distinguished historian Henry Reynolds who wrote: “Carrying the populist banner of reducing the number of politicians the two parties [Liberal and Labor] conspired to reduce the House of Assembly from 35 to 25 members this had the effect of significantly raising the barrier to any aspiring third party candidate or independent from a minimum of 12 per cent to 17 per cent of the vote. It was a cunning stratagem ...” see Henry Reynolds, *A History of Tasmania*, Cambridge University Press, Melbourne and New York. 2012.

There is no doubt that the attenuation of the Parliament has cast a shadow over Tasmanian politics which must be lifted: it can only be lifted by the restoration of the House of Assembly to 35 seats. As foretold in the Ogilvie report, of 1984: “If the House of Assembly were reduced to 25 members a party winning Government with 13 members would be faced with little scope in selecting a Cabinet” (ibid p.15). The consequence has been the overburdening of Ministers with multiple portfolios, and the virtual elimination of a back bench for the party in Government (see also (x) 2. below and (vi) above.

(x) Since 2011 there have been some promising developments, despite the defeat (by the vote of the majority parties) of a resolution by the Greens to restore the full membership of the House on September 25 2013. It is noted:

1. In 2016 in response to a submission by the TCS to the Legislative Council Government Administration Committee B on the Electoral Commission, the Committee found that “a significant number of submissions and witnesses took the opportunity to express concern at the 1998 downsizing of the House of Assembly and called for numbers to be increased.”
2. In March 2017, the new Leader of the Opposition, Rebecca White, declared that “she would like to see state Parliament made larger, backing the case for the returning of the assembly from 25 MPs to its previous 35 MPs” (the *Australian* March 27 2017, p.6, and observed that “the Tasmanian Parliament would function better with more members, not just because of the (work) loading on the portfolio holders but also the committee work that’s required – it gives you

greater depth on your backbench and strengthens your talent pool.”

3. On May 17 2017 the Tasmanian Constitution Society held a Forum in which a significant group of senior political commentators and observers, including the Honourable Jim Wilkinson, President of the Legislative Council, Professor Richard Herr, Michael Bailey, Chief Executive Officer of the Tasmanian Chamber of Commerce and Industry, and Governance expert Tom Baxter, unanimously called for a restoration of the House of Assembly.
  4. The Legislative Council in November 28 2017 passed by a decisive majority a resolution calling for “an independent review of the size of the Tasmanian Parliament”(see *Mercury* report 2 February 2018).
- (xi) It is time to act on the present mood of reform and the Tasmanian Constitution Society urges that the Select Committee recommends such action. The Tasmanian Parliament has been the cradle of democracy in Australia: it has been significantly damaged by reduction and ought to be repaired; so as to restore the substance and spirit of the Tasmanian democratic ethos, and restore vitality, capacity and morale both to the Tasmanian Parliament and the progress of the State of Tasmania.

Peter Chapman, President Tasmanian Constitutional Society, March 6 2019.