

DRAFT SECOND READING SPEECH

HON GUY BARNETT MP

Electoral Amendment Bill 2024

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

This Bill amends section 196 of the *Electoral Act 2004* to limit section 196 to applying only to how-to-vote cards. The wording of section 196 will also be modified to ensure that the now limited prohibition extends to “keeping on display” as well as the initial act of printing, publishing and distribution.

Section 196 currently provides that

(1) A person must not between the issue of the writ for an election and the close of poll at that election print, publish or distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice which contains the name, photograph or a likeness of a candidate or intending candidate at that election without the written consent of the candidate.

Section 196 is unique to Tasmania, with the original provision (prohibiting just the use of a name without consent) introduced into electoral legislation in 1921.

When the *Electoral Act 1985* was introduced, the equivalent provision was expanded to prohibit the use of a photograph or likeness of a candidate.

While the original reason for introducing a restriction on the use of a name of a candidate has been lost over time, the Tasmanian Electoral Commission made a submission in 2019 to the Review of the Electoral Act stating:

“There is some conjecture that this provision was included in earlier versions of the Electoral Act primarily to address concerns about the use of how to vote cards (HTV cards) at House of Assembly elections.”

This is quite unique to the Tasmanian context and the Hare-Clark system where candidates are competing not only against candidates from other parties but also with candidates from their own party.

The Tasmania Law Reform Institute (TLRI) made a submission to the Electoral Act Review. The TLRI expressed concerns that section 196 could unduly restrict the dissemination and receipt of information, opinions and arguments concerning government and political matters, contrary to the

High Court decision in *Lange v Australian Broadcasting Corporation*. The TLRI indicated that it supports the removal of section 196 submitting that:

“Any restrictions on political communication must be proportionate and necessary to address legitimate concerns. Candidates may be concerned by the potential publication of inaccurate material, including false HTV cards. However, the Institute considers that requirements for authorisation of electoral material and prohibition on the publication of misleading and deceptive material are sufficient to protect against false statements being made about candidates or HTV cards.”

There does not appear to be any reason to retain the section 196 prohibition more generally, other than for HTV cards. There was general consensus during consultation on the Terms of Reference for the Electoral Act Review that the provision is problematic and it was also noted that these restrictions do not apply in other Australian jurisdictions.

Recommendation 1 of the Final Report Electoral Act Review included amending this clause. In line with the Final Report, an attempt was made to amend section 196 as part of the Electoral Matters (Miscellaneous Amendments) Bill 2022, however this clause was voted down in the Legislative Council in November 2023

As part of the 2030 Strong Plan, the Government has committed to “Amend section 196 of the Electoral Act (2004) to remove the prohibition on the use of names and images of candidates in advertising.” This Bill will fulfil this commitment.

And I therefore commend the Bill to the House.