

Response to the Legislative Council Government Administration Committee 'B'

27 February 2015, Authors: Avery, Waechter, Taoum

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C/O Mr Stuart Wright

Secretary, Legislative Council Sessional Committee Government Administration B

27 February 2015

Honorary Members of the Committee,

Response to the Legislative Council Government Administration Committee 'B'

We, the undersigned, welcome your inquiry into the operations of the Tasmanian Electoral Committee (TEC), and submit the attached paper for your review and consideration.

This submission outlines the background and particulars of our recent experience involving TEC, and a summary of the main issues we see them; we have also analysed these issues using the lens of the four parts of terms of reference of the Legislative Council Government Administration Committee 'B' (The Committee), which is to report upon the operations of the Tasmanian Electoral Commission with particular reference to:

1. The administration of *Electoral Act 2004*
2. The resourcing available to the Tasmanian Electoral Commission
3. Any deficiencies with the *Electoral Act 2004*
4. Any other matters incidental hereto

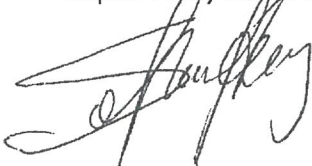
We have a number of supporting documents, including copies of email exchanges, complaints submitted to the TEC during the campaigning and election which was administered by TEC, as well as logs of phone calls and complaints, and relevant correspondence from TUU, TEC, the Attorney General and copies of other parties' complaints and phone call logs from the same event. These have not been included with this initial submission, to ease the burden on the Committee, but are available to review, should further evidence be needed.

We look forward to your findings and recommendations,

Sophia Avery B.Pharm MPS

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Outcomes sought:

- Clarity on whether the TEC, the Commissioner and the Returning Officer are performing their functions under *the Act* (Sections 9 and 15 and 25 respectively) when undertaking a private fee for service ballot as authorised by 9(3) of *the Act*, whether through an amendment to *the Act* or through provision of relevant enforceable regulations.
- Clarity on the governance of TEC's actions and functions when it is administering private/contract elections or ballots as authorised in section 9(3) of the *Electoral Act 2004 (the Act)* to govern, whether through an amendment to *the Act* or through provision of relevant enforceable regulations.
- Transparency of who the Tasmanian Electoral Commissioner is accountable to when he/she is performing duties outside of his/her statutory legislated position, i.e. is the Commissioner at this point acting under the *State Service Act 2000* and is he/she answerable to the Secretary of Department of Justice as the relevant delegate or to the Attorney General or to the Tasmanian Governor? ; understandably it is an unexpected situation where a voter or a candidate may want to seek amends or seek accountability for TEC's actions or inactions, however we did find ourselves in such a situation where it appeared the TEC was not answerable to anyone.

Background:

Tasmanian Electoral Commission administers the elections for student representatives for the Tasmania University Union (TUU). TEC administered the 2014 TUU election, which took place between 9 to 11 September 2014, with campaigning opening in the previous month. During this election, for which all the undersigned on this submission were candidates, there was repeated inappropriate behaviour during the campaigning and during the voting process, including tampering with voters inside the TEC voting booths.

For example, during campaigning, some candidates used wilfully deceitful campaign tactics such as offers of food in exchange for votes, telling voters that other candidates were members of "Young Liberals", and knowingly lying to voters about personal background of other candidates and lying about their policies and plans.

During voting, some candidates used "how to vote" cards – copies of the current ballot with marked ticks against the names which they wanted the voter to mark were given to voters outside polling place, voters were harassed outside the voting places and told they "must Vote Labour", voters were harassed and coached inside the voting booths, whereby a 'coach' would lean over a voting student from behind and reach their arm over the voter's shoulder and point to where the voter

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should mark the ballot paper. Some voters took their ballot papers outside the voting place to have candidates fill these in for them 'correctly'. TEC officers were involved in repeatedly reprimanding persons coaching/intimidating voters in polling booths and also needed to retrieve ballot papers which were taken outside the polling place for candidates to fill out on behalf of voter.

The undersigned to this submission, along with other candidates, and students not directly involved in the election made complaints about the unethical and immoral way the elections were conducted and other candidates were allowed to behave, with no reprehension from the Returning Officer or the Tasmanian Electoral Commissioner. Since the elections concluded, we have also spoken with a number of students whom we did not know before, who had also emailed and phoned the Returning Officer to complain. Telephone logs and copies of all correspondence are available, should the Committee need further evidence.

The advice received from TEC was that since the TEC is acting outside the *Electoral Act 2004*, TEC is unable to take any action to stop such activities and relies on the constitution of the contracting body. Although the TEC and the Tasmanian Electoral Commissioner (the Commissioner) advised they were acting outside *the Act*, the Secretary, Department of Justice advised that as the Tasmanian Electoral Commissioner is a statutory role, the Secretary of DoJ has no jurisdiction over the Commissioner's actions and cannot give him/her any direction.

Identified problems

- The TEC is operating to double standards: supposedly TEC delivers services to set to legislated norms when their activities are legislated and can be controlled through legislative means, but closing their eyes on gross ethical and moral issues when there is no suitable legal tool to demand action or to address inaction.
- When the TEC is delivering services to community organisations and private businesses outside of their legislated role, it appears there is no governance or legislative tool which can hold the TEC accountable for the quality of their service/s. This opens both the TEC and the contracting organisation to a great risk.
- By taking on fee-for-service elections without appropriate governance, and relying solely on the hiring authority's constitution, the TEC and consequently the Tasmanian Government, and possibly representatives elected by the people are exposing themselves to risk of public outcry at problems; for example, after speaking to various local and national media outlets, it was only respect for the name of the University of Tasmania which held us back from fully utilising the media in our outrage over this experience.

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Analysis using Terms of Reference lens:

Terms of Reference	Problem	Details
1. The administration of <i>Electoral Act 2004</i>	Selective administration of <i>the Act</i>	1.1 TEC administers <i>the Act</i> selectively when there is no clear direction for the TEC to be acting under <i>the Act</i> ; for example, during the TUU elections candidates were directed by the Returning Officer (following complaints) that provision of food to influence votes is disallowed (<i>the Act</i> section 188 (1)(a) "A person must not directly or indirectly supply food, drink or entertainment"). The prohibition of supply of food as a form of electoral bribery is <u>not</u> included in the contracting body's Constitution or Regulations. This is evidence of selective administration of <i>the Act</i> by TEC, yet advising that whilst delivering a fee-for-service election, TEC is not governed by <i>the Act</i> .
2. The resourcing available to the Tasmanian Electoral Commission	Lack of transparent reporting of a government agency's income from private sources.	2.1 There is no provision or tool to seek clarity on exactly the amount of income TEC makes from private contracts it undertakes from time to time pursuant to section 9(3) of <i>the Act</i> , how many contracts it takes on and quality assurance of service delivery. There is also no legislation which governs open disclosure for the TEC to report to the public on the amount of funding it may make from private contracts, or which contracts it may take on.

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<p>3. Any deficiencies with the Electoral Act 2004</p>	<p>No clear term of appointment of TEC members.</p>	<p>3.1 There is no provision of term of appointment of Commissioner or the other two members of the TEC.</p>
<p>3. Any deficiencies with the Electoral Act 2004</p>	<p>No clarity whether TEC and the Commissioner acting under the Act when administering private elections.</p>	<p>3.2 There is no clarity whether the TEC and the Commissioner are or are not governed by the Act when administering private fee-for-service elections, For example, in the experience outlined in this submission, the polling place was not appropriately controlled, and should the TEC have been acting the Act, section 95(a) and 112 could have given the complainants basis for seeking action – the TEC must “provide appropriate numbers of election officials”.</p>
<p>3. Any deficiencies with the Electoral Act 2004</p>	<p>No specification of what types of organisations TEC may deliver fee-for-service.</p>	<p>3.3 Does the TEC have sufficient powers to undertake elections for the Tasmania University Union, or do the TUU elections fit under <i>Fair Work (Registered Organisations) Act 2009</i>, as do all other union elections in Australia?</p> <p>3.4 The Act provides a tool for TEC to undertake contractual service delivery, but does not stipulate what kind of organisation the TEC may do this for. This also exposes the TEC to risk from being involved in contracts with inappropriate organisations, or, conversely, not having a solid reason to turn down an inappropriate contract/offer.</p>

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<p>4. Any other matters incidental hereto</p>	<p>Potential regulatory void for hiring organisation.</p>	<p>4.1 The TEC is operating to double standards: supposedly delivering services to set to legislated norms when their activities are statutory and can be controlled through legislative means, but is closing their eyes on gross ethical and moral issues when there is no tool available to use to take action, as there is no suitable legal tool in place. This has the potential to leave any hiring organisation in a legislative and regulatory void with no means to seek remediation of inappropriate activity or inactivity by the TEC.</p>
<p>4. Any other matters incidental hereto</p>	<p>Appropriate governance for TEC members' actions when not governed by the Act</p>	<p>4.2 In our experience, as the TEC and its members reportedly were not governed by the Act whilst delivering fee-for-service election, the line of authority had broken down in the absence of governing legislation. So, as we took our complaints to increasingly higher levels of government, reportedly no one had authority to address inaction at a lower level. According to the Act section 15 (3) "the Commissioner may give written direction to the election officials and members of the staff of the Commission with respect to the performance of their functions and the exercise of their powers under this Act" – however, we experienced a void for Commissioner to give direction to the Returning Officer</p> <p>4.3 The Act says in 24 (5) "A person holding the office as a returning officer is not subject to the State Service Act 2000", this could mean that a Returning Officer whilst administering a fee-for-service election and still a representative of the TEC and of government, is not governed by any performance standards or expectations.</p>

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