



Mr Scott Hennessey,
Secretary,
JSCCM,
Parliament House,
Hobart

15 November, 2024

Dear Secretary,

The Chair raised a question (using my words, and not the Chair's) as to how this Committee could embark on an assessment of statements made in the course of an election campaign, because of the open-ended nature of such an inquiry or inquiries. After my evidence on 5 November 2024, I sought the opportunity to make a further submission. That opportunity was granted, and this is my further submission.

My response is as follows:

1. This Committee has been delegated its function by both houses of the parliament.
2. The resolution establishing the Committee¹ included, by clause 2, the following:

(2) Any aspects of the administration, operation and conduct of the 23 March 2024 General Election of Members of the Assembly and the 2024 Legislative Council periodic elections, shall stand referred to the Committee for any inquiry the Committee may wish to make;
3. The Terms of Reference are repeated – almost identically - in the Resolution of the Committee²:

To inquire into and report upon aspects of the administration, operation and conduct of the 23 March 2024 General Election of Members of the House of Assembly and the 2024 Legislative Council elections.
4. I assert the proposed investigation falls squarely within the Committee's Terms of Reference. It is looking at aspects of the operation and conduct of the March 2024

¹ https://www.parliament.tas.gov.au/__data/assets/pdf_file/0015/83013/Resolution-establishing-the-Joint-Standing-Committee-on-Electoral-Matters.pdf

² <https://www.parliament.tas.gov.au/committees/joint-committees/standing-committees/joint-standing-committee-on-electoral-matters/inquiries/inquiry-into-the-2024-house-of-assembly-general-election-and-2024-legislative-council-elections>

General Election. The making of a misleading statement is no less about the conduct of elections as is direct and indirect electoral bribery, as discussed by the Integrity Commission in its submission in Paper 1³. The Integrity Commission's point about the risks flowing from electoral bribery⁴ is equally applicable to a misleading statement or omission of the magnitude raised here:

"Indirect electoral bribery is rarely criminal, and would not usually amount to misconduct. Nonetheless, it poses a significant threat to public confidence in government. It is also questionable conduct from an ethical perspective....."

5. Elections are conducted through candidate and party communications with voters, with statements reported in print, broadcast, online and social media. Thus, the impact of a misleading statement from the time of it being made all the way through to election day must be considered. Only then can the impact on the "conduct" of the election be considered and understood.
6. If the Committee is to examine the conduct of the election, and, in that context, the impact of misleading statements (and of omissions) on the conduct of the election - and thus how people voted - I suggest the Committee identifies, adopts and applies criteria to justify its examination of such conduct.
7. I suggest the following criteria that the Committee could apply. In doing so, I distinguish between the statement ("not a cent more than \$375m") and the omission (to inform the electorate the federal government's \$240m was part of Tasmania's GST allocation, and was not extra funding).

The Committee must be satisfied that:

- a) Significant issues at play in the relevant election campaign can be identified.
- b) The statement in question was made in respect of a significant issue or issues in the election campaign.
- c) The statement in question was made in the course of the election campaign.
- d) The statement in question was widely reported in print, broadcast, online and social media through the election campaign period.
- e) In the case of an omission, the omission was operative throughout the entire course of the election campaign period.
- f) There is a clear nexus between the statement/omission in question, and the significant issues at play in the election.

³ https://www.parliament.tas.gov.au/__data/assets/pdf_file/0024/84912/5.a.-Integrity-Commission-Paper-1-Tasmanias-Electoral-Act-Offences-and-Campaign-Conduct.pdf

⁴ At page 2.

- g) There is a likelihood the misleading statement may have impacted how a significant number of people voted in the election.
- h) There is a likelihood that, if the omission had not occurred, the omitted information would have impacted how a significant number of people voted in the election.
- i) The statement in question must have been a statement of fact or a guarantee (and not a promise or a statement of position, or an expression of opinion).
- j) The statement was made by a leader of a party or senior person in that parliamentary party.
- k) That, in the case of an omission, the party leader or senior person in that parliamentary party was responsible for the omission.
- l) In the case of an omission to reveal information, the Committee must be satisfied on the basis of objective evidence that there is a reasonable prima facie case the person (or party) failed to provide the information to the electorate. Conjecture or suspicion is not sufficient.
- m) There must be a significant public interest in this Committee investigating the statement/omission.
- n) An examination of the statement/omission must promote the objective of better practice in the conduct of elections in Tasmania.
- o) There is no other forum for accountability for the misleading statement or for the omission.

Yours faithfully,

A black rectangular box redacting the signature of Roland Browne.

Roland Browne