



Democracy for Sale

A Submission To

**The Legislative Council Government
Administration Committee 'B'**

Presented By

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Executive Summary

To improve Tasmania's democracy and the public's confidence in our electoral system, the Committee should recommend significant changes to the *Electoral Act 2004* to create a framework for the disclosure of political donations in real time, caps on expenditure for state and local government elections, and a cap on the amount of money that can be donated to political parties, MPs and candidates.

The Committee should also recommend amending the *Constitution Act 1934* to restore the number of MPs in the House of Assembly to 35 and to increase the size of Cabinet.

The Committee should also recommend a ban on political donations from companies which make money primarily from tobacco and/or gaming, and investigate banning donations from other types of companies which have a net negative impact on our society.

The Committee should also recommend further investigation of public funding for Tasmanian political parties and candidates in line with most other Australian jurisdictions.¹

The Tasmanian Electoral Commission (TEC) performs its statutory functions admirably, while undoubtedly burdened by inappropriately low funding. The Committee should recommend that funding for the TEC be restored to at least its level prior to the 2014-15 state budget.

Tasmania's electoral system has generally served the state well, but it has significant flaws that require urgent attention. Our state lags behind every other Australian state in the transparency of our democratic processes, and the accountability of political parties and candidates.

This Inquiry provides a major opportunity for reform. Adopting the recommendations in this submission would go a long way to improving the functioning of our electoral system and the Parliament of Tasmania in line with community expectations.

Recommendations

- Recommendation 1: That the Committee recommend that comprehensive state-based political donation disclosure legislation covering state and local government elections, including the real time disclosure of political donations to registered parties and candidates published on a website maintained by the Tasmanian Electoral Commission, are introduced and implemented prior to the next House of Assembly election at the latest.
- Recommendation 2: That the Committee recommend that a lower threshold for public disclosure of political donations than is currently the case in the national framework be included in new state based donations disclosure legislation.
- Recommendation 3: That the Committee recommend that the introduction of a cap on the amount that can be donated in any year from a single individual or entity to a political party or candidate in state and local government elections be included in new state based donations disclosure legislation.

¹ Public funding either as a direct entitlement scheme or a reimbursement scheme are provided for by the Commonwealth, the ACT, NSW, Queensland, Victoria and Western Australia.

- Recommendation 4: That the Committee recommend that an election expenditure cap for individual candidates and registered political parties contesting state or local government elections be included in new state based donations disclosure legislation.
- Recommendation 5: That the Committee recommend that an election expenditure cap for third parties seeking to influence state or local government election outcomes be included in new state based donations disclosure legislation.
- Recommendation 6: That the Committee recommend the introduction of an immediate ban on political donations from tobacco, gaming, liquor and property development entities.
- Recommendation 7: That the Committee recommend that the *Constitution Act 1934* be amended to restore the number of seats in the House of Assembly to 35, and to permit the size of the Cabinet to be increased by at least one Minister or Secretary to Cabinet.
- Recommendation 8: That the Committee recommend that the government requests and adequately resources the *Tasmanian Law Reform Institute* to investigate and make recommendations regarding public funding for state political parties and candidates.
- Recommendation 9: That the committee recommend that funding for the TEC be restored to at least its level prior to the 2014-15 state budget.

Political Donations Disclosure

- Recommendation 1: That the Committee recommend that comprehensive state-based political donation disclosure legislation covering state and local government elections, including the real time disclosure of political donations to registered parties and candidates published on a website maintained by the Tasmanian Electoral Commission, are introduced and implemented prior to the next House of Assembly election at the latest.
- Recommendation 2: That the Committee recommend that a lower threshold for public disclosure of political donations than is currently the case in the national framework be included in new state based donations disclosure legislation.

It is not acceptable that in the 21st century, Tasmanians go to the polls not knowing who has donated to each political party or candidate, and how much was donated. Tasmanians should be able to make fully informed decisions when evaluating political parties or candidates, not be kept in the dark as is currently the case.

Tasmanians deserve a rigorous real-time political donations disclosure regime to provide us with full confidence regarding financial influence on public policy.

In the absence of state legislation, the only laws which apply are the Commonwealth disclosure laws.² Election disclosure returns are not available until up to 24 weeks after polling day and annual disclosure returns are not made public until the following first working day in February. This means

² Part XX of the *Commonwealth Electoral Act 1918*

that currently in Tasmania it can be up to 18 months after a donation is made that disclosure occurs, and only if that donation is above the disclosure threshold.

Tasmania places no restrictions on who can donate to candidates or parties, and there is no cap on donations. Outside of the *Commonwealth Electoral Act 1918* requirements there are no Tasmanian laws requiring candidates to report donations they receive over the course of an election campaign. It is worthy of note that under the *Tasmanian Electoral Act 2004* there are funding, reporting and expenditure requirements for Legislative Council Candidates, but not House of Assembly candidates.

Support for state-based disclosure laws and election spending limits for the House of Assembly is not new in Tasmania. In 1991 the Carter Royal Commission recommended their introduction. In 2008 both the Labor and Liberal Parties supported a Greens' motion calling for the enactment of disclosure laws, and in 2013 the House of Assembly passed the *Electoral Amendment (Electoral Expenditure and Political Donations) Bill 2013 (No. 83)*.

Real-time disclosure would not be unique to Tasmania. One example can be found at the Ontario Election Commission.³ When contributions in excess of \$100 or contributions from a single source that in aggregate exceed \$100 are made to registered political parties, their Chief Financial Officer must file a report with the Chief Electoral Officer within ten business days after the contribution is deposited. The Chief Electoral Officer in turn must publish the information on the *Elections Ontario* website within ten business days of receiving the report.

Closer to home, the Australian Capital Territory's disclosure rules are widely recognised as the most progressive in the country. Currently the ACT is the only jurisdiction that provides for 'real-time' disclosure of political donations. A return detailing all donations over \$1000 must be submitted within seven days of receipt when the donation is made during the pre-election capped expenditure period, or within 30 days of receipt should the donation be made outside of that period. According to the ACT Electoral Commission, returns detailing donations over \$1 000 are generally made public within a week of verification. Additional annual and post-election reporting is also mandated.⁴

State-based political donations disclosure legislation should also include local government elections. We recognise that the conduct of these elections are administered under the *Local Government Act 1993* rather than the *Electoral Act 2004*, however given the Tasmanian Electoral Commission's involvement in those election campaigns it would be logical to extend any disclosure and cap regime to both state and local tiers of government. It is worthy of note that the Local Government Association of Tasmania supports a disclosure regime for local government in Tasmania.

Given the critical role that local councils play in Tasmania's planning and development approvals process, increased transparency would improve public confidence and trust in local government.

A system of real-time (or continuous) disclosure in Tasmania which covers both state and local government elections would enhance transparency and accountability, and online disclosure could make this system relatively straightforward and inexpensive to operate.

³ <http://www.elections.on.ca/en-CA/Tools/FinancialStatementsandContributions/RealTimeDisclosure.htm>

⁴ ACT Electoral Commission, "Election funding, expenditure and financial disclosure: 2012 election", 2012: pg 14.

Political Donations Cap

- Recommendation 3: That the Committee recommend that the introduction of a cap on the amount that can be donated in any year from a single individual or entity to a political party or candidate in state and local government elections be included in new state based donations disclosure legislation.

Despite the current legislated (national) disclosure threshold being \$10 000, the threshold for disclosure in the financial year of 2014 – 15 is \$12 800 due to CPI indexation. Any donations below this amount can remain anonymous, including multiple donations. The *Age* newspaper reported in 2012 that the four major parties in Victoria had receipts of \$77 million but that only about \$3.4 million could be sourced to individual, corporate or other donors.⁵

Legislative discrepancies in the *Commonwealth Electoral Act 1918* put different responsibilities on donors and recipients. Donations to a federal party in 2013 totalling \$505 000 by a corporation did not have to be disclosed by the party as the party is only required to disclose when they receive donations above a threshold.⁶

There are currently no limitations, or caps, on the amount that individuals, corporations or other organisations can donate to a political party or candidate. In addition, a primary donor may use individuals or third party groups to make multiple small donations.

The introduction of a cap on the amount that can be donated in any year from a single individual or entity to a political party or candidate would reduce the opportunity for wealthy people or entities to leverage donations to gain priority access or policy outcomes from MPs (including Ministers and governments).

A cap of \$100 would be worthy of consideration, but in any event a cap should not be greater than \$1000.

Election Expenditure Cap

- Recommendation 4: That the Committee recommend that an election expenditure cap for individual candidates and registered political parties contesting state or local government elections be included in new state based donations disclosure legislation.
- Recommendation 5: That the Committee recommend that an election expenditure cap for third parties seeking to influence state or local government election outcomes be included in new state based donations disclosure legislation.

Without a cap on election expenditure for state and local government elections there is a risk that our democracy is essentially for sale to the highest bidder. This is a bigger risk to Tasmania than other Australian jurisdictions due to lower relative election expenditures and advertising costs in Tasmania.

Expenditure caps in some other Australian jurisdictions vary. The Committee should consider assessing these caps and recommending appropriate election expenditure caps covering parties, candidates and third parties seeking to influence state and local government elections.

⁵ <http://www.theage.com.au/victoria/whats-in-a-threshold-parties-hide-big-backers-20120201-1qthe.html>

⁶ <http://www.smh.com.au/federal-politics/political-news/millions-in-party-political-donations-unaccounted-for-20130413-2hsjrp.html>

It is worth noting that the need to address election expenditure by third parties has already been identified by the 2009 Joint Select Committee on Ethical Conduct. That Committee's report contained the following recommendation:

*"Recommendation 32 - The Committee recommends that a review of the Electoral Act 2004 be conducted to provide for the disclosure of the identity of sponsors of political advertising conducted by persons or organisations other than political parties during election campaigns."*⁷

That this recommendation has not yet been progressed is puzzling and disappointing.

Ban on Certain Donations

- Recommendation 6: That the Committee recommend the introduction of an immediate ban on political donations from tobacco, gaming, liquor and property development entities, and investigate banning donations from other types of entities which have a net negative impact on our society.

There is a strong argument that companies whose primary means of making a profit have a net negative impact on Tasmania's people should be banned from making political donations. At a minimum this should mean that companies whose primary means of profit are tobacco, gaming, liquor should be banned from making donations.

The ACT currently has a ban on corporate donations to parties and candidates. NSW has a ban on donations from property developers, tobacco, gambling and liquor entities.

Restoring the House of Assembly to 35

- Recommendation 7: That the Committee recommend that the *Constitution Act 1934* be amended to restore the number of seats in the House of Assembly to 35, and to permit the size of the Cabinet to be increased by at least one Minister or Secretary to Cabinet.

All three political parties currently represented in the House of Assembly favour restoring the House to 35 members, with disagreement around timing only.

Many public commentators and current and former MPs have stated clearly that a Parliament unable to fulfil its responsibilities to the community imposes a real and unacceptable cost in lack of efficiencies, and poorer outcomes for the Tasmanian people.

The restoration of the House of Assembly to its pre-1998 numbers would make politicians more accessible to their constituents, improve the effectiveness of the House of Assembly and the parliamentary committee system, and allow for a larger Cabinet to allow for greater Ministerial focus on portfolio responsibilities.

⁷ Joint Select Committee on Ethical Conduct, *'Public Office is Public Trust'*, 2009.

Public Funding

- Recommendation 8: That the Committee recommend that the government requests and adequately resources the *Tasmanian Law Reform Institute* to investigate and make recommendations regarding public funding for state political parties and candidates.

Publicly funding political parties and candidates is the only effective way to break the nexus between political donors and those they donate to.

Of all Australian states, only Tasmania and South Australia do not have state based public funding for political parties.

This should only be considered if major reform is recommended to introduce a cap on donations, election expenditure, and greater disclosure of donations as recommended earlier in this submission.

Adequate Funding for the Tasmanian Electoral Commission

- Recommendation 9: That the committee recommend that funding for the TEC be restored to at least its level prior to the 2014-15 state budget.

The budget of the Tasmanian Electoral Commission (TEC) was identified as a Budget Savings Strategy by the current government in its 2014-15 state budget. Although no further information was provided on the quantum of the budget cut, funding for the TEC should be increased, at a minimum, by the amount which it was decreased by the current government.

Conclusion

Accepting the recommendations in this submission would improve the quality of Tasmania's democracy, improve the operational effectiveness of the Parliament of Tasmania and bolster the confidence of the Tasmanian people in our democratic structures and systems.