

23 February 2015



Mr Stuart Wright  
Committee Secretary  
Legislative Council  
Parliament House  
Hobart TAS 7000

Dear Mr Wright

Thank you for invitation to make a submission to the Legislative Council Government Administration Committee 'B' inquiry into the operations of the Tasmanian Electoral Commission.

On behalf of the Australian Labor Party Tasmanian Branch (Tasmanian Labor) the following submission is made.

This submission deals with the four terms of reference;

1. The administration of the 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.

Whilst this submission will address the four terms of reference, Tasmanian Labor believes a pressing issue is the need for a state based electoral funding and disclosure mechanism.

Tasmanian Labor has received written advice from the Ms Seema Srivastava, Assistant Commissioner, Funding and Disclosure, Australian Electoral Commission making it clear there is no legislated funding and disclosure requirement for endorsed candidates of political parties in Tasmanian state elections.

This matter will be dealt with under Terms of Reference 3 – Deficiencies with the Electoral Act 2004.

## **1. Administration of the Electoral Act 2004**

Tasmanian Labor believes the current system where the administration of the Electoral Act rests with the Tasmanian Electoral Commission (TEC) is sound. Tasmanian Labor's experience with the TEC is this organisation administers the Act professionally and independently.

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Tasmanian Labor is unaware of any reason why the responsibility for the administration of the Electoral Act should be changed in any way.

## **2. The resourcing available to the Tasmanian Electoral Commission**

Tasmanian Labor has identified two areas where additional resources need to be allocated to the Tasmanian Electoral Commission. Both of these issues related to the participation of Tasmanians in our democratic processes.

### **(a) Unintentional Informal Voting in Tasmanian Elections**

The Tasmanian Electoral Commission publishes a “Report on Parliamentary Elections” which normally cover three year periods. Within these reports the TEC detail informal voting that takes place at elections.

When compared to recent federal elections it is clear that the informal vote at state elections is higher as shown below.

|  |  |
|--|--|
| <u>2010 State Election</u><br>14,915 informal votes or 4.45% | <u>2010 Federal Election</u><br>13,791 informal votes or 4.04% |
| <u>2014 State Election</u><br>16,429 informal votes or 4.79% | <u>2013 Federal Election</u><br>13,892 informal votes or 4.03% |

The TEC conducts analysis of the informal vote and classifies it in two areas; an intentional informal vote and unintentional informal vote.

TEC reports show the unintentional informal vote in the 2006 state election was 8,324 electors and 2010 state election 8,375 electors. Tasmanian Labor is unaware if similar analysis has been conducted for the 2014 state election.

In real terms the historical data means over 8,000 Tasmanians at an election inadvertently cast an informal vote thus denying themselves the right to participate in our democratic processes.

There is no reason to believe this figure was not replicated at the 2014 state election.

Tasmanian Labor recommends this matter could be addressed through greater resourcing to the TEC to allow them to conduct educational campaigns so as to ensure the unintentional informal vote figure is significantly lowered.

(b) Voter Turnout at Legislative Council Elections

Analysis of results and voter turnout at Legislative Council elections compared to House of Assembly elections show a significant discrepancy.

For example the voter turnout at 2014 Legislative Council elections was 83.26% across both divisions, for the 2013 Legislative Council elections the voter turnout was 84.93% across the three divisions.

When compared to the 2014 and 2010 state election, the voter turnout was 93.49% and 93.85% respectively.

In real terms this means approximately 5,000 Tasmanians in each Legislative Council election do not exercise their democratic right to participate.

Tasmanian Labor recognises the TEC works hard to publicise Legislative Council elections but it is clear from the consistent discrepancy between state election turnout and upper house turnout more work needs to be done.

Tasmanian Labor recommends additional resources should be allocated to the TEC to allow greater promotion of Legislative Council elections.

Elsewhere in this submission Tasmanian Labor also suggests another mechanism to ensure greater participation in Legislative Council elections.

### **3. Any deficiencies in the Tasmanian Electoral Act 2004**

Tasmanian Labor has identified a number of deficiencies in the Tasmanian Electoral Act 2004.

**(a) No state based funding and disclosure system for candidates at state elections**

Tasmanian Labor has received written advice from the Australian Election Commission (AEC) that in summary states there is no legislated electoral and funding disclosure requirement for endorsed candidates of registered political parties who contest state elections. A copy of this correspondence is attached for the Committee's consideration.

Historically Tasmania's registered political parties would provide an annual return to the Australian Electoral Commission on behalf of the Party and its Members of Parliament and Candidates. However it is clear from the advice of the AEC, there is no legislated requirement for political parties to report campaign income and expenditure from an endorsed candidates election campaign or any other time.

Tasmanian Labor believes a robust electoral system is an important part of any democracy, however the community must have confidence in the systems in place to guarantee its integrity.

Other than a requirement for Legislative Council candidates to declare campaign expenditure, Tasmania remains the only Australian state without state based funding and disclosure legislation.

Similarly Tasmania is the only Australian state without state based funding and disclosure for registered political parties.

Tasmanian Labor has brought this matter to the attention of the current state government. The government response has been this matter should be raised with this Committee, hence its inclusion in this submission.

Tasmanian Labor believes any state based legislation must operate under some key principles including;

- Expenditure caps for political parties, candidates and third party groups in state and legislative council elections,
- A mechanism to ensure greater transparency of third parties who participate in election campaigns
- A reduction in the current Commonwealth disclosure threshold of political donations and timely reporting of donations received,
- A requirement for independent candidates in both houses to be subject to the same disclosure and reporting requirements as endorsed candidates of political parties,
- A system of public funding that allows for the administration of electoral funding and disclosure requirements but limited to ensures any payment made does not exceed actual expenditure,
- Donation caps for individuals and organisations who wish to support candidates or political parties in the lead up to and during elections,
- The banning of donations from tobacco companies,
- The banning of overseas donations,

- A limitation on anonymous donations

The following is further detail on each principle Tasmanian Labor believes must be part of any state based funding and disclosure legislation.

(i) Expenditure Caps

Political Parties

The political climate prior to and during elections is extremely competitive meaning political parties are consistently engaged in an “arms race” in respect to fundraising for campaigning.

This “arms race” is ongoing and can potentially lead to political parties obtaining donations from many sources creating perceived conflict of interest amongst the wider community.

All three major parties are subject to criticism and comment over campaign funding.

As mentioned in this submission, this perception leads to a reduced confidence from the community in the political process.

An expenditure cap on political parties in the lead up to and during election campaigns can limit the “arms race” and engender greater confidence in the electoral process.

Tasmanian Labor believes an expenditure cap of somewhere between \$500,000.00 to \$750,000.00 would be sufficient increasing by the Hobart consumer price index (cpi) over the period between elections.

Tasmanian Labor also believes the current definition of electoral expenditure as defined in the Tasmanian Electoral Act is sufficient to capture any campaign expenditure.

House of Assembly Candidates

Tasmanian Labor believes the capacity for a person to be elected to parliament should not be based on the wealth of an individual candidate.

Election campaigns by their nature are expensive with some candidates reportedly spending in excess of \$100,000.00 at state elections.

Candidates who do not have the individual wealth, private or corporate support are at a disadvantage under the current electoral system.

Any member of the Tasmanian community should be able to compete on a relatively level playing field and seek election to the Tasmanian Parliament.

The current system which allows unregulated and unlimited expenditure by candidates is detrimental to greater participation in the electoral process and ultimately may lead to a Parliament that is not reflective of the Tasmanian community.

The “arms race” as discussed in respect to political parties is also equally relevant to candidates.

Candidates may equally be subject to negative perceptions and a loss of confidence in the political process if that “arms race” is allowed to continue.

An expenditure cap on candidates will enhance Tasmania’s democratic processes and also create a much more level playing field for Tasmanian’s seeking election to the House of Assembly.

Tasmanian Labor submits the expenditure cap for candidates should be somewhere between \$45,000.00 to \$70,000.00 increasing by the Hobart consumer price index between elections.

#### Legislative Council Candidates

Section 160 of the Electoral Act limits expenditure in Legislative Council election to \$10,000.00 in the year 2005, increasing by an additional \$500.00 each subsequent year.

The current expenditure cap is \$15,000.00

Tasmanian Labor submits the current expenditure cap for Legislative Council elections is vastly insufficient.

It does not allow for new candidates to conduct a campaign sufficient to raise voter awareness of their skills and capabilities.

Tasmanian Labor believes the low cap gives sitting Legislative Council members an unfair advantage over new candidates.

Sitting MLC's have six years of incumbency and parliamentary allowances to raise awareness and promote themselves in their electorates. For example the average electorate allowance expenditure an MLC can spend over the six year cycle is around \$200,000.00.

In addition to these allowances, a sitting MLC is currently able to spend an additional \$15,000.00 during the campaign period.

Tasmanian Labor believes the low expenditure cap does not represent a level playing field for new candidates.

The cap rewards incumbency to such an extent many MLC's are re-elected unopposed and the majority of sitting MLC's are returned at election.

Tasmanian Labor believes this is an unhealthy situation and does not encourage a robust inclusive democracy.

Tasmanian Labor also submits the low expenditure cap is responsible in part for the low voter participation at Legislative Council elections. The voter participation at Legislative Council elections is on average ten percent less than a state election.

Limited campaign activity by candidates due to the low expenditure cap means the wider community in many cases does not even know there is an election being held.

Tasmanian Labor submits the expenditure cap for Legislative Council elections should be around \$30,000.00 increasing annually by the Hobart cpi and the current expenditure period from 1 January continues to apply.

Whilst dealing with the issue of electoral expenditure Tasmanian Labor believes Section 162 of the Electoral Act that prohibits political parties incurring expenditure during the expenditure period from 1 January should be repealed.

Current practice is that political parties "incur" expenditure but endorsed candidates are invoiced for these amounts and repay parties from their own campaign funds.

This ensures the political party is not subject to a potential breach of Section 162.

Tasmania Labor submits Section 162 and its practical application is overly bureaucratic.

Tasmanian Labor does not believe political parties should be given “open slather” to engage in Legislative Council elections, but submits any expenditure by a political party on behalf of an endorsed candidate should simply be included in that candidates expenditure cap.

(ii) Third Parties and Associated Entities

Recent Tasmanian elections have been marked by the participation of third party groups who seek to engage in the campaign process.

Tasmanian Labor supports the rights of any third party or interest group to be part of the political process.

However in the interests of transparency, the participation of these groups must be subject to similar scrutiny as registered political parties and candidates.

In the context of participation, House of Assembly elections are about which political parties and their candidates can best represent the interests of Tasmanian’s over the ensuing four years.

Interest groups should have a right to participate in that process, express a view and encourage support of a particular party if that is their want.

However this participation should not be to the extent that the election becomes about the third party group and not the policies of the various political parties or candidates.

Tasmanian Labor believes an expenditure cap of \$100,000.00 increasing annually by the Hobart cpi is sufficient to allow for third parties to participate in the election process.

Tasmanian Labor also believes there needs to be a process to ensure greater transparency from third parties that participate in elections.

Tasmanian Labor recommends under a state based system of funding and disclosure, third parties should be registered with the Tasmanian Electoral Commission (TEC). The names and addresses of directors or person’s responsible for third parties should be publicly made available within seven days of registration by the TEC.

It should also be an offence for a third party to participate in the campaign process unless they are first registered.



The TEC should also develop registration criteria so as to ensure only genuine third parties participate in the electoral process. Such criteria could include being registered for gst, having a tax file number, being registered as a business in Tasmania, or being an incorporated organisation registered with the Department of Treasury and Finance.

Tasmanian Labor also submits third parties should be subject to the same funding and disclosure process as registered political parties.

(iii) Disclosure Thresholds and Reporting

Tasmanian Labor submits the current Australian Electoral Commission (AEC) disclosure threshold of \$12,800 is too high and does not provide any confidence to the wider community in the funding of political parties.

Tasmanian Labor submits any state based legislation must have a much lower cap of somewhere between \$1,000.00 and \$5000.00 increasing annually by Hobart Consumer Price Index would be a more appropriate disclosure threshold for registered political parties and candidates.

Similarly third parties should also be subject to the same cap.

Tasmanian Labor also believes any state based system of disclosure should include more regular reporting.

Currently disclosure returns from registered political parties are not available until the first working day in February the following year after reporting.

In real terms this means for a March state election, the returns for political parties are not available for almost 12 months after the election

The existing arrangement under Section 161 of the Tasmanian Electoral Act that applies to Legislative Council candidates expenditure is a good example of disclosure legislation that is working well. However it should be noted there is no requirement for Legislative Council candidates to identify the source of their campaign income.

The current AEC legislation is also flawed in that it only applies to registered political parties. As indicated the written advice received from the AEC is that the existing Commonwealth legislation does not include candidates of political parties.

The Commonwealth legislation also does not include independent House of Assembly candidates and Legislative Council candidates.

This means, other than a requirement for Legislative Council candidates to disclose campaign expenditure, the funding and disclosure requirement for any political candidate in Tasmania is totally unregulated.

Similarly there is no disclosure requirement for third parties who participate in state election campaigns.

The community should be able to know in a timelier manner which individuals or organisations are supporting political parties, candidates and third parties.

Tasmanian Labor recommends twice annual disclosure of receipts and expenditure for all participants in the political process.

Tasmanian Labor also recommends following a state election campaign a special receipt and expenditure return should be lodged with the Tasmanian Electoral Commission within sixty days after polling day.

In summary Tasmanian Labor recommends all participants in the election campaign process are subject to the same disclosure thresholds and reporting.

#### (iv) Public Funding of Elections

The question of public funding in Tasmanian elections has been debated for many years.

Tasmania remains the only Australian state that has no public funding.

Coincidentally Tasmania is the only state without any state based election funding and disclosure laws.

It is clear that a system of public funding operates complimentary to state based disclosure and expenditure laws as evidenced by what happens in all other Australian jurisdictions.

There is no doubt the conduct of election campaigns is an expensive exercise.

As previously mentioned election campaign expenditure has been likened to an “arms race” where political parties and candidates compete for campaign funds and expenditure.

Expenditure by candidates and political parties will continue to escalate and with even more mediums where people obtain information from, the “arms race” will be ongoing.

The community rightly demands transparency in the electoral process.

However there is little recognition of the relationship between stringent electoral disclosure laws, donation and expenditure caps, the cost of conducting elections campaigns and the need to have the administrative functions in place to comply.

Tasmanian Labor recommends in principle, that a system of public funding is essential to ensure elections can be conducted appropriately with stronger electoral disclosure and funding laws.

The Tasmanian community has a right to be informed during the electoral process; however this comes at a cost.

Tasmanian Labor also submits that any system of public funding must include a figure that requires minimum electoral support before public funding is given.

Any state system must also prevent profiteering by candidates and political parties. That is any level of public funding must not exceed the difference between the campaign cost and income received by the candidate or party.

Tasmanian Labor is very mindful of the current economic climate and the need for public funds to be expended where they are most needed. As such Tasmanian Labor recommends public funding should be investigated when the economic climate and budgetary outlook in Tasmania improves.

#### (v) Donation Caps

There is currently no threshold on donation caps to political parties and candidates.

This creates an unhealthy perception that political influence can be bought by wealthy corporations or individuals.

Whilst there is no actual evidence to support this proposition, the perception remains to the detriment of the political process. It could be improved by a limitation on the amount individuals or corporations could donate to candidates or political parties.

Equally though organisations and individuals have the right to support political parties and participants in the political process.

Limitations on third parties as set out in this document and a restriction on the amount of funds that could be donated still permit the right to participate but importantly create a greater perceived integrity in the political system.

To create this integrity Tasmanian Labor believes a cap on individual donations to both organisations and individuals should apply.

A reasonable donation cap for an organisation would be a maximum of \$25,000.00 in any financial year and for individuals \$10,000.00.

(vi) Tobacco Donations

The Tasmanian Parliament has systematically undertaken significant reform in respect to the use of tobacco in the wider community.

These legislative reforms have always received tripartite support in the House of Assembly and carriage through the Legislative Council demonstrating wide spread community support for restricting the use of tobacco.

Given the legislative support for restricting tobacco it would be inconsistent for any state based political donation and disclosure reforms to allow for political parties and candidates to receive donations from tobacco companies.

Tasmanian Labor recommends a ban on tobacco companies making donations to political parties and candidates within any state based funding and disclosure legislation.

(vii) Foreign Donations

Australia has legislative instruments to prevent foreign investments that are against the nations interests.

It appears inconsistent that on one hand Australia would limit foreign investment, but on the other political parties could receive donations from foreign sources.

The Commonwealth Government has attempted on a number of occasions to ban foreign sourced donations to help remove a perception that foreign donors could exert undue influence over the Australian political process.

At a state level both New South Wales and Queensland ban foreign donations to political parties and candidates in an effort to remove the perception of undue foreign influence over the political process.

Tasmanian Labor recommends that any state based electoral reform dealing with donations to political parties and candidates should ban foreign donations.

(viii) Anonymous Donations

Should the Tasmanian Parliament adopt any state based system of electoral reform relating to political donations then it is essential a limitation be placed on the level of anonymous donation that could be made to political parties and candidates.

It would be inconsistent to ban donations from tobacco companies, foreign sources and restrict the amount an individual or organisation could donate to political parties and candidates, while at the same time allow for anonymous donations to be received.

Allowing anonymous donations would undermine all other forms of electoral reform.

Tasmanian Labor recommends any state based legislations dealing with political donations and funding must prohibit anonymous donations.

Although a reasonable balance needs to be found to allow for small donations for raffles and other events to be not covered by a ban on anonymous donations.

**(b) Current Legislative Deficiencies**

Tasmanian Labor has identified two areas of existing legislation that it believes the Committee should investigate.

**(i) Section 196**

Section 196 prohibits the use of a candidate's name or image in printed form without that person's permission. Yet Section 196 does not prohibit the use of a candidate's name or image in electronic form either through television or radio advertising or through the internet.

Tasmanian Labor recommends either Section 196 be abolished or amended to remove this obvious inconsistency.

**(ii) Section 198**

Section 198 prohibits campaigning on polling day through advertising in a printed form, distribution of how to vote cards, handbills etc.

However it does not prohibit on line advertising or sms on polling day. The use of on line advertising and sms on polling day falls outside of the scope of the Broadcasting Services Act 1992. This Act prohibits the broadcasting of political advertisements from the end of Wednesday before polling day to the close of poll on polling day.

Tasmanian Labor recommends either Section 198 be abolished or amended to remove this obvious inconsistency.

**4. Any Other Matters**

Tasmanian Labor has identified additional matters that the Committee should seriously consider to improve this state's democratic processes.

Tasmanian Labor recognises local government elections are conducted under the Local Government Act 1993 and not the Electoral Act 2004. However given the nature of these elections, the fact they are administered by the Tasmanian Electoral Commission and their relevance to democracy in this state, Tasmanian Labor believes the Committee should review their conduct.

In particular Tasmanian Labor believes the Committee should investigate local government election turnout and the use of the "General Managers Roll" in local government elections.

Tasmanian Labor also believes it is relevant for this Committee to investigate the timing of Legislative Council elections and more broadly Tasmania's current political structures

(i) Local Government Election Turnout

Despite the best efforts of the Tasmanian Electoral Commission and candidates who stand at local government elections, the voter turnout is extremely poor.

Tasmanian Labor submits turnout rates of 50% of eligible voters clearly demonstrate a flaw in the current system and are not representative of an inclusive robust democracy.

Tasmanian Labor recommends the only way this extremely low voter turnout can be addressed is through compulsory voting.

Tasmanian Labor further recommends there be an investigation of the best method of compulsory voting whether that is through the current system of postal ballots or the use of polling day polling booths. It may also be an ideal opportunity to trial on line voting in local government elections.

(ii) General Managers Roll

Section 254(2)(a) of the Local Government Act allows for property owners to vote in multiple local government elections throughout Tasmania.

Tasmanian Labor believes Section 254(2)(a) is inconsistent with the democratic principle of one vote - one value. A person's ability to equally participate should be based upon their place of residence and where they are correctly enrolled.

Tasmanian Labor recommends the ability to vote in a local government election should not be based upon how much property a person own and Section 254(2)(a) should be abolished to ensure the principle of one vote - one value remains.

(iii) Tasmania's Political Structures

As previously indicated in this submission Tasmanian Labor is concerned at the low voter turnout at legislative council elections. From a community perspective every year somewhere in Tasmania there are election campaigns.

More broadly though Tasmanian Labor believes there may be scope electoral reform of the Legislative Council and our political systems. The current system may have served Tasmanian well over many generations but Tasmanian Labor believes it would be timely to investigate what is the best political and parliamentary structure to serve our state.

The current system of holding Legislative Council elections independent of House of Assembly elections is inconsistent with the rest of Australia. As well the very essence of a single member

upper house and a proportional lower house is inconsistent with the Westminster system of parliament.

Tasmanian Labor recommends a panel of eminent persons be established to review our electoral systems. Such a panel should widely consult with the Tasmanian public, MLCs and other key stakeholders. Issues to be canvassed could include the introduction of simultaneous elections, whether a proportional lower house and single member upper house remains the best parliamentary model or whether a unicameral parliament is in the states long term best interests.

## **Summary**

Tasmanian Labor appreciates the opportunity to make a submission to the Legislative Government Administration Committee 'B'.

It is a very timely decision of the Legislative Council to investigate Tasmania's electoral processes.

Please feel free to contact the author of this submission should the Committee require further information or if at any stage the Committee wishes to receive a verbal submission to supplement this document.

Yours sincerely



John Dowling  
**STATE SECRETARY**  
**ALP TASMANIAN BRANCH**





Our Ref: fad6771



Mr John Dowling  
Secretary and Party Agent  
Australian Labor Party (Tasmanian Branch)  
PO Box 1115  
HOBART TASMANIA 7001

Dear Mr Dowling

**2013-14 Annual Return – Disclosure of transactions incurred by State election candidates**

I have been provided with your email of 8 October 2014 addressed to Mr Alan Page, Assistant Director, Funding and Disclosure Branch, Australian Electoral Commission (the AEC). Your email sought advice as to whether the *Commonwealth Electoral Act 1918* (the Act) requires the Australian Labor Party (Tasmania) (the party) to include in its annual disclosure return the transactions of State candidates endorsed by the party. I understand these transactions relate to the Tasmanian state election campaign.

My response is provided on the basis of the facts contained in your email to Mr Page.

The relevant provision of the Act is s.314AB(2). Under this provision a return provided to the AEC must set out all transactions that can be considered to have been transacted 'by, or on behalf of, the party'.


Normally an endorsed candidate would be considered to be an agent of the endorsing party when involved in an election campaign, especially when operating through a campaign committee. However, the circumstances in a Tasmanian State election are somewhat different given the operation of the Hare Clark electoral system. As explained in your email, as this system results in endorsed candidates of the same party competing against one-another for seats and the result is candidates often run individual campaigns separately, and in addition to, the central campaign run by the party. Furthermore, in the case in question, the candidate ran his campaign through his own personal bank account and did not appear to have received the funds on behalf of the party.

While the party is in the best position to make a judgement based on how it structures its State election campaign, the circumstances outlined in your email suggests that the campaign transactions of these State candidates could not be said to have been received 'by, or on behalf of the party' and therefore, would not fall within the scope of s.314AB (2) of the Act. Thus the party would not be required to incorporate the transactions incurred by endorsed candidates at State

elections where those transactions are part of the candidate's personal campaign and not part of the party's election campaign. If, however, the facts surrounding the receipt of the funds by the candidate in question are different to what I have stated in this letter I may consider revising my opinion. I will rely on you to inform me if this needs to occur.

If you have any further questions please don't hesitate to contact me on (02) 6271 4429 or at [fad@aec.gov.au](mailto:fad@aec.gov.au).

Yours sincerely



Seema Srivastava  
Assistant Commissioner, Funding and Disclosure

14 October 2014