

The Secretary  
Legislative Council Sessional Committee Government Administration B  
Tasmanian Electoral Commission  
Legislative Council  
Parliament House  
Hobart Tas 7000

### **SUBMISSION REGARDING DEFICIENCIES WITH THE *ELECTORAL ACT* 2004**

I seek to make submissions to this Committee regarding what I consider to be three particular deficiencies with the *Electoral Act* 2004. I submit that the third issue, relating to political donations, arises because of deficiencies in the *Commonwealth Electoral Act* 1918, and which could be dealt with in the *Electoral Act* 2004.

There is an additional matter included in these submissions relating to donations to candidates in local government elections. Whilst that is outside the Committee's present terms of reference, I have included submissions as to why those terms of reference should be widened.

#### **Section 196**

Section 196 of the *Electoral Act* 2004, prevents, amongst other things, the publication advertisements during election campaigns containing the name, photograph or likeness of a candidate without that candidate's written consent.

Specifically, that section provides as follows:

#### **196. Candidate names not to be used without authority**

(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.

Penalty:

Fine not exceeding 300 penalty units or imprisonment for a term not exceeding 12 months, or both.

(2) Subsection (1) does not apply to any matter printed, published or distributed by the Commission or the Commissioner in the course of promoting public awareness of elections and parliamentary matters.

In Commonwealth, Territory and other State elections for example, there are occasions where a candidate or party may wish to have published, an advertisement referring to the policies or other matters regarding an opponent. Such advertising is

permitted in those elections but is not permitted in elections held for the Tasmanian legislature, because of section 196.

Tasmania is unique in that regard and there can be no justification for that unique position.

To highlight the fact that section 196 in fact hinders proper discourse during a State election campaign, I set out the following example:

Candidate X was a candidate in the election immediately preceding the present election and is a candidate in the present election. He was elected in that previous election. His party formed Government following that previous election and he was made a Minister. Following his elevation, he announced that during the Government's term, it would implement a policy that would lead to the abolition of land tax. The policy is not implemented in that Government's term and during the present election, his opposing candidate would like to have published an advertisement highlighting the fact that Candidate X did ensure that land tax was abolished during the previous Government's term. His opponent could not use Candidate X's name, photograph or likeness in such an advertisement without Candidate X's written consent because of section 196.

It is my submission that, as well as preventing proper discourse, section 196 has the potential to shield candidates from proper scrutiny by their opponents and should be repealed and is not the law in other jurisdictions.

### **Section 198**

Section 198 of the *Electoral Act 2004* is a provision which, if it ever could be justified, no longer can be. It is an anomaly in the context of the modern electronic world and is also at odds with the law of other States and Territories.

That section, as it presently exists is as follows:

#### **198. Campaigning on polling day**

**(1)** A person must not, on the polling day fixed for an election, or on a day to which the polling for an election has been adjourned –

**(a)** distribute any advertisement, "how to vote" card, handbill, pamphlet, poster or notice containing any electoral matter; or

**(b)** publish or cause to be published in a newspaper –

**(i)** an advertisement for or on behalf of, or relating in any way to, a candidate or party; or

**(ii)** a matter or comment relating to a candidate or a question arising from, or an issue of, the election campaign.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term of 3 months, or both.

(2) Subsection (1) does not apply to any matter printed, published or distributed by the Commission or the Commissioner in the course of promoting public awareness of elections and parliamentary matters.

No other State or Territory has legislation of this nature, making Tasmania the only jurisdiction within this country to have a newspaper blackout for advertisements on election day in respect of the State legislature.

This anomaly is compounded by the fact that it only applies to newspapers and not to electronic media.

This newspaper blackout, whilst unique in this country, is a relic of the past given that media communication has proliferated in recent years. There could be endless commentary on sites such as Facebook that could be shared amongst thousands of voters, including on election day. None of that is prohibited.

Whilst it is hard to find any proper basis for the enactment of this prohibition in the first place, it certainly no longer has any place in the modern world of instantaneous communication.

There can now be no other reason for this prohibition than some misguided notion that newspaper advertisements regarding an election on election day contain some evil that other forms of publication on that day do not.

### **Political donations**

A potential loophole in the legislation allows political candidates at State Elections to receive cash donations without the public's knowledge.

Under the existing system, the Hare Clarke system, endorsed candidates of the same party have the capacity to run individual campaigns separate from the main party campaign, given they are often in direct competition with one another.

There is therefore the capacity for candidates to take direct donations that do not have to be declared because they were not received "by, or on behalf" of the political party endorsing them.

I contend this potential loophole is problematic and could be closed by supporting state-based disclosure laws under the Act.

### **Additional matter**

Whilst I appreciate that the terms of reference of this Committee are presently confined to matters directly and indirectly arising out of the provisions of the *Electoral Act 2004*, I urge the Committee to seek a widening of its terms of reference to be able to deal with what I submit is an urgent and related matter arising under the provisions of the *Local Government Act 1993*.

That issue is the fact that candidates in local government elections are not required to disclose donations of any kind, unlike the obligations that State and Federal election candidates are required to do; at least to some extent.

Although local government candidates are governed by different legislation, this issue is clearly one which is linked to general considerations of the kind that would be looked at under the *Electoral Act 2004*, and as such should be included in the present review.

The fact local government candidates are not forced to disclose donations, which is out of step with disclosure laws in all of the other States, is of serious concern and leaves local government open to the potential for corruption and means little or no transparency around future decisions made at that level of government.

While, as I have indicated, such matters are covered by the *Local Government Act 1993*, in response to a direct line of inquiry on those matters earlier this month, Premier Will Hodgman (the Mercury, February 2) said any changes to Tasmanian laws around political donations could be considered by this inquiry.

He said the Attorney-General would consider "any concerns" raised "before proposing any changes to electoral law". There exists therefore the perfect opportunity for this Committee to seek broadened terms of reference to look into this unsatisfactory state of affairs.

I respectfully ask that these submissions be considered by the Committee.

Yours sincerely



Matt Deighton

Editor

The Mercury