

# PUBLIC

## THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON WEDNESDAY 6 NOVEMBER 2024

**The public hearing commenced at 9.00 a.m.**

**CHAIR** - Thank you very much, Kevin Bonham, for coming in to appear before the Joint Standing Committee on Electoral Matters for our hearings for our first inquiry into the 2024 General House of Assembly election and the periodic Legislative Council elections this year. We appreciate your time and the submission that you've made. I'm going to introduce you to the members of the committee who are here today, joining us online, we have Simon Wood, Liberal member for Bass, we have Cassy O'Connor, Greens member for Hobart, Kristie Johnston, independent member for Clark, Vica Bayley, Greens member for Clark, Rebecca Thomas, independent member for Elwick, and I'm Meg Webb, independent member for Nelson. We've got Scott as assisting secretariat and Gaye on Hansard here in the room.

Thank you so much for your time, I'm going to just start with some formalities. Before you begin giving your evidence, I'd like to ask whether you have received the guide sent to you by the Committee Secretary.

**Dr BONHAM** - I have.

**CHAIR** - Thank you. I'd like to reiterate some important aspects of that document here. This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This is a public hearing. Members of the public and journalists may be present and this means your evidence may be reported.

It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand this?

**Dr BONHAM** - Yes, I do.

**Dr KEVIN BONHAM**, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** - Thank you very much. Now, would you like to make some opening remarks before we move to questions?

**Dr BONHAM** - Yes, this will be a somewhat longer opening statement than I am usually accustomed to because there are a number of matters that I want to comment on, some of which came up yesterday and some of which came up in submissions.

Firstly, on the matter of informal voting, which was covered in the TEC's appearance yesterday. I wanted to give some figures from the report on the election that are relevant in terms of the impact of the election on informal voting and then I want to make some comments about that as well.

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At the 2024 Tasmanian House of Assembly election, informal voting rose from 5.13 per cent to 6.31 per cent. That's the second highest level ever. The highest was when the ballot paper columns were first introduced and it was about 10 per cent. Apparently deliberate informals rose from 2.18 per cent to 2.56 per cent of turn out. Informal votes containing only ticks and crosses rose from 0.98 per cent to 1.22 per cent, an increase of exactly 1000 votes from 3527 to 4527. Informal votes containing multiple first preferences fell from 0.90 per cent to 0.80 per cent. Informal votes caused by omissions and repetitions between places two and seven rose from 0.93 per cent of turnout, 3346 votes, to 1.64 per cent of turnout, 6111 votes.

Of the informal votes caused by omissions and repetitions, as we've already heard, 212 resulted from the voter voting one to five and stopping. 825 resulted from the voter omitting either six or seven and 806 resulted from the voter duplicating either six or seven. All of these votes, 1843 or 0.50 per cent of turn out, would have been formal in 2021. The number of informal votes caused by omissions or repetitions between places two and five, these being votes that would have also been informal in 2021, rose from 0.93 per cent of turn out to 1.15 per cent of turn out.

There are multiple things going on here. There's an increase in informals caused by having to number more boxes and people making mistakes or stopping early. There is an increase in deliberate informals or apparently deliberate informals. There is some increase in ticks and crosses because people don't understand the system, and there is also some increase in people making mistakes at a point where the vote would have been informal under the old system anyway. All of those things are going on. I think that the number of candidates, what I've seen with local government, back before they had the one to five for local government when they had one to however many places you were filling. In those days, the informal vote was very strongly related to the number of boxes that a voter had to fill. The more boxes you have to fill, the more clerical errors voters make. 1 to 5 to 1 to 7 has, as predicted, caused an increase there. When you have more candidates, that can also increase the number of informals and the complexity of the ballot paper is also causing more people making mistakes and getting two 4's or two 3's, or whatever.

People vote in all kinds of complicated ways and it's easy for people to lose track of what they're doing. A lot of people are just scatty with numbers, unfortunately, when they're trying to cast a formal vote and they mess up and put two 4's or leave out a number or something like that. There are multiple things going on, but there is certainly an issue with the increase to seven.

Yesterday we heard concerns from the Electoral Commissioner that if you have a savings provision where votes are saved that stop at 5 or that have mistakes, that you could get a situation where parties deliberately exploited that by running smaller numbers of candidates. The ACT has a savings provision where a vote that has a unique 1 is formal and the major parties do not do that. They almost always run full slates of five, even though it might give them more control over who gets elected to run only two or three. They almost always run full slates of five to make it easy for the voter to comply with the instruction, which is vote 1 to 5.

There was one minor exception in the recent election where the ACT Liberals disendorsed one of their incumbents at very short notice and having done so they decided to run only four candidates. This may have been a deliberate strategy on their part, also to try to throw preferences to other parties so the voter will vote 1 to 4 for the Liberals and then might

preference the conservative party 5th. It's not clear whether if it was that they couldn't find a candidate or that they possibly decided this might be a good idea anyway, in the circumstances.

It doesn't happen. If you have a savings provision, the major parties are not going to start running just five candidates. There's no reason to think that they will do that. It will make it harder for their voters to vote for them. Even if the major parties did run only five candidates and got themselves into a situation where they ran out of candidates for a recount that would have been on their own heads for doing such a stupid thing in the first place. I can't say that this is a valid concern.

I also point out that I had a look at the one that I had to hand readily, which was the ballot papers for Murrumbidgee in the ACT 2020. I had that one in hand because I was commissioned to do analysis on it. 0.96 per cent of turn out did not get 1 to 5 in order. That's about the same level as here. The idea that a savings provision is going to cause a large increase in people voting a limited number and stopping is just baseless as far as I can tell. I will say that the ACT has, in some respects, they have a more evenly educated voter base. You might get some differences as a result of that, but it's not significant.

It was mentioned yesterday, as I said in my submission, there is no evidence that the increased rate of informals affected the results. None of the results were particularly close at this House of Assembly election, but there is potential there. As an example of the potential that exists, in Lyons, despite having slightly fewer votes than the Liberals, Labor lost 140 more votes to repetitions and omissions than the Liberals did. That is very capable of deciding a seat, we have had closer results between parties than that in the past.

That was what I had to say on the subject of informal voting. One down. I take a little break between some of these.

**CHAIR** - Would you like questions on that topic before you move on to your next one?

**Dr BONHAM** - Yes, if you want me to break up my opening statement, I'm happy to do that.

**CHAIR** - Let's do that, because I think there will be questions on that matter and it will condense it in the same area of *Hansard*.

**Dr BONHAM** - Section 196 is another one that will be big and then the rest are brief points.

**CHAIR** - We'll try and manage our time so we get through everything.

**Mr BAYLEY** - Kevin, thank you for your submission and I want to acknowledge and say thank you for your contribution to the public debate during election times and analysis. I think it's really important, it's really valued, and I know the media outlets and the community really value it, I do too and I'm sure we all do. I acknowledge and thank you for that.

On the savings provisions, that's where I was going to go. I was going to ask whether you were persuaded by the TEC's points. Obviously, I take it that you're not. In that case, how should the savings provisions be constructed? What is it that we should be looking to recommend to be implemented in this space specifically that can manage some of the risk? Is

there a way of managing the risks that the TEC identifies but at the same time provide for the protections that you are keen to make sure are enshrined?

**Dr BONHAM** - I mentioned that I gave two options. One was any vote that was formal under the old one to five system will still be formal. The TEC's evidence that not very many people voted one to five and stopped, has pushed me more towards my second option. The second option is any vote where the voter has numbered at least seven boxes with the unique one be considered formal when exhausted the point of first error, you could add to that, the ACT has a special provision that's designed to reduce the impact of exhausting votes on the count, which could also be considered, it's quite complicated. When a candidate gets a surplus, they try to keep the votes going that still have preferences and they try to leave the votes that don't have preferences behind with the elected candidates, so that increases the number of votes flowing through the system. That does have some sort of flow on consequences that go to recounts that are rather weird, but that's one thing that they do in the ACT to reduce that. That is one suggestion I have.

I think the advantage of the second suggestion I give there, which is that if a voter has numbered at least seven boxes and they've got a unique one, then their vote's formal. I'm not sure whether you'd necessarily include things like 1, 2, 2, 2, 2, because in that case the voter, well 1 and six 2s, because in that case, the voter hasn't made a reasonable attempt to comply with the ballot paper instructions. If the voter's just missing a few numbers within the range 1 to 7 but they're trying to do 1 to 7.

**CHAIR** - For example, somebody's numbered 1, 2, 3, 4, 5, 5, 6, 7, 8, et cetera, this would allow their vote to be counted and, potentially, moved on, redistributed through to where they made the mistake at 5, but not past 5.

**Dr BONHAM** - Yes. If there's two 5s, then it's valid 1 to 4, at that point it's exhausted.

**CHAIR** - Because you can't determine which 5, sure.

**Dr BONHAM** - Yes, something like that. There used to be in the senate in the old days when, if you voted below the line, you had to number every box. There used to be sort of rules to say how many errors you could make. You could put a cap on how many errors a voter could make if you wanted to.

**Mr BAYLEY** - Presumably, that would have to be explicitly worked out and articulated so that the returning officers have a defined criteria by which they follow.

**Dr BONHAM** - Yes.

**Mr BAYLEY** - Every scenario would need to be thought through and articulated.

**Dr BONHAM** - The TEC could advise on how exactly to formulate it best within that range, whether you just say anything with a 1 and six other numbers counts or whether you make it a bit more restrictive than that. I think that the advantage of my second option is that it protects the voter who has made an unintentional error. It protects the voter who has read the instructions, is trying to comply with the instructions but makes a mistake, whereas a voter who votes 1 to 5 and stops, I have slightly less sympathy for that voter because they haven't read the instructions or it may be that they completely don't understand the instructions because of

the language issue and possibly they think it's the same as last time or something like that. It's quite likely that they haven't actually read the instructions and taken in that they need to follow the instructions.

What concerns me most is seeing votes disallowed where the voter is trying to follow the instructions, they make a mistake because their number skills are not that good, and then, suddenly, because of some strange concern about people getting exact quotas or something that is totally irrelevant to the legitimacy of election under this system, we go to say 'No, your vote doesn't count'. We have to say that the integrity of this system means your vote can't be counted. That's silly. We need to be looking for ways to count votes, not ways to not count votes. The parliament needs to tell the TEC to go and count these votes and not let the TEC keep coming up with excuses for not counting them. I can keep debunking these excuses, but it seems like there is an endless supply.

**Mr BAYLEY** - Okay. Thank you.

**Ms O'CONNOR** - Thank you, Chair, and thanks, Kevin, for your service to democracy. In the evidence that we heard from the TEC yesterday, there was discussion of how votes that may be invalid are looked at in the first instance by the TEC. There is an assessment of whether or not that vote reflected the intent of the voter. That's where this would fit in too, wouldn't it? If we have these savings provisions, we can be sure that the intent of the voter is captured.

**Dr BONHAM** - Yes, as far as it can be. The problem with the existing intent of the voter provision is that if you can determine that the intention of the voter was to cast a certain formal vote 1 to 7 without omissions, then you can't count that vote. Even though the voter may have done something wrong like numbering outside the box or writing a word instead of a number or, whatever else in that category. As long as you can clearly translate it into a vote that is formal, you can count that vote under that intention of the voter provision. If the vote is not formal because the voter has omitted or repeated numbers, the intent of the voter provision provides them with no protection.

**Ms O'CONNOR** - We are looking here, possibly, at an amendment to section 102 of the *Electoral Act* which relates to the marking of ballot papers and it requires that a ballot paper have, without omission or duplication, the numbers 1 to 7 in the boxes of the names next to the categories. That's where we could deal with this, isn't it? In the act.

**Dr BONHAM** - Yes. You could look at various acts around Australia as to how they deal with it. I think the normal way is that you add another provision just below that says, 'notwithstanding section blah, blah blah, a ballot paper shall also be formal if it complies with these conditions'. That might be that at least seven boxes have been numbered and a unique one has been included. Or it might be something more complex than that, more limiting than that, but that's a matter to consider further.

**Ms O'CONNOR** - Thank you.

**Ms JOHNSTON** - Kevin, thank you very much for your submission and for your service to democracy. It's very useful for all of us.

Your second recommendation, that would obviously alleviate the concerns of the TEC because if it's 1 to 7 and we're trying to save those who've accidentally numbered two 5s or

whatever it might be, that would alleviate the concerns of the TEC in terms of parties only running one to five candidates, for instance, because the intent is you want seven votes to be counted. Is that correct?

**Dr BONHAM** - That's right. Yes, that's another advantage of this, is that - even though I think the concern about major parties only running five candidates is groundless. We do see in the ACT that a lot of minor parties will run smaller slates because of this savings provision. They are less likely to run full slates because there's no reason to if your voters happen to only vote 1 to 3 in a five-member electorate and then stop, you've still got the votes, but that's not a problem.

**Ms JOHNSTON** - In the 2024 election, we saw the Jacqui Lambie Network won three candidates, for instance, there was no evidence that their voters went 1, 2, 3 and stopped after that, in terms of informal?

**Dr BONHAM** - There will be figures in the report. I didn't look at that. I didn't look to see how many Jacqui Lambie Network voters went 1 to 3 and stopped but there's figures on how many stopped at a given place in the TEC's report. I didn't look at that because I was so focused on the six to seven.

**CHAIR** - They've got another report coming out soon that is a more detailed analysis of the informal situation. I think in the broad report they've put out already doesn't necessarily go to the granularity of that, does it? No, it does, I think, in the pages at the back. Those data tables.

**Dr BONHAM** - It is quite good. I was quite impressed with the amount of detail that was in there but there are still some questions that are not answered, questions about, sort of, if a voter had omitted 6 or 7, was it because they went 1 to 6 and stopped, or was it because they went 1 to 6 and skipped? We don't have clear figures on how many voters were trying to number seven or more boxes as opposed to stopping early in that data.

**Mr BAYLEY** - I think we heard yesterday that 45 per cent of votes that went 1 to 5 were running down the Shooters and Fishers column that had five candidates in Lyons.

**CHAIR** - It may have been because they've just followed that and then stopped.

**Mr BAYLEY** - And then stopped at five, yes.

**Dr BONHAM** - Yes, and I'd say also that running exactly five candidates in this election was probably not ideal. and Tasmania been a tendency in the existing system for small parties that run less than the maximum number of candidates to suffer, but the same tendency does not apply to Independents, even though they're just running a single box. I think that's also partly to do with the voter base that those parties are drawing support from.

**CHAIR** - I must say I'm definitely more inclined to see the second option you presented there as more preferable, only because my concern about savings provisions that only require a lesser numbering is always that if the message at all gets out to the community that actually you only have to do five, we might be dissuading people from fully utilising their vote and putting a full set of preferences in. I would be concerned about any messaging or communication to the public that it is okay to vote less than seven, for example, when we're

trying to get that message out so clearly to them that you must vote one to seven and continue, if you can. The idea of savings provisions as per your second recommendation where it doesn't allow for a lesser preferencing of only one to five seems preferable to me also. Do you think, though, that there's a degree of that that can be achieved through better and more thorough public education and more time leading in?

**Dr BONHAM** - I do think that the TEC had a struggle with the amount of lead-in time for this election, but this problem with more strictly required spaces leading to a higher informal rate is an extremely strong problem that was showing up in the local government elections. It's not specific to this election and the change to seven members. It's something that happens whenever you have a large number of candidates.

Similarly, in federal elections, even though they have a similar linear ballot, for a given seat - and it's important that I specify for a given seat - there is a relationship between how many candidates run in that seat and the informal rate. More candidates equals more informals. I say for a given seat because there are factors that influence informal voting that cut across that. Certain areas have naturally huge informal voting rates, whatever the number of candidates, and certain areas have naturally low rates.

**CHAIR** - Thank you. Would you like to move to the next area you wanted to discuss with us?

**Dr BONHAM** - No. 2 is section 196. I wasn't going to go into this so much because I understand a separate inquiry has been referred, which I think is good. I think having separate inquiries into substantial legislative change proposals is what this committee is here for and -

**CHAIR** - Sorry to interrupt you but before you go into that, any evidence we take in this inquiry through submissions and hearings we can carry across into the further inquiry around the bill that's been referred to us - just to be clear.

**Dr BONHAM** - I'll have more to say about that in due course. This Juice Media episode with the satirical mock advertisement that was deemed to be likely an advertisement is very troubling to me. On one level, it's harmless in that there was no significant loss to electoral free speech in terms of them not being allowed to put a photo of Jeremy Rockliff in their mock advertisement at that point and then having to take it down and replace it with a potato or whatever they did. There is not a significant loss of free speech there, in my view, but the episode did lead to Juice Media then putting out a very popular video that brought the state of Tasmania, the Tasmanian Electoral Commission and the Tasmanian election into disrepute. I'm very concerned about that. I'm very concerned about anything that trivialises elections and sort of says elections are a joke, but the problem is that the situation with this law is a joke.

The Liberal Party submission quoted the advice that the TEC sent out about section 196. The TEC sent out advice which said the words 'notice' and 'advertisement' are not defined and so should be understood to have their ordinary meaning. This is completely sensible. Somehow this later morphs into a situation where a mock advertisement is an advertisement because, based on yesterday's evidence, it comments about the performance of government. That is not the ordinary meaning of the word 'advertisement'.

I have very severe concerns about the quality of advice that has been given on this issue. I would like to see all legal advice that was received by the TEC on this matter released

publicly. This also raises concerns for me about truth in electoral advertising. I'm not very convinced about full-scale truth in electoral advertising anyway, but what is going to happen if we have truth in the electoral advertising laws and they are interpreted in such a bizarre manner as this? You're going to have people stopped from saying things they should be allowed to say.

For me, people being stopped from saying things they should be allowed to say in an election is a far more serious problem than people being allowed to say things that are questionable. If people can say misinformation and other people can rebut misinformation, that's one thing, but if people can't even say something that is true or reasonable in the first place because of restrictive law, that is a big problem and this law has to be fixed. There's a question that it does have some positive impacts and whether you replace them with something, but this situation where we are having rulings like this should not continue.

There have been points made that this law is helpful in stopping misinformation, but there could also be situations in which this law contributes to perpetuating misinformation. For instance, suppose there was a confrontation between two candidates, such things happen in places from time to time, and someone is putting out misinformation about this confrontation. The candidate who is the target of the misinformation has a video of this situation and they would like to put out an advertisement with this video to show that it did not happen as it's being alleged. They cannot put that out as an advertisement without the consent of any other candidates who may be shown on the video. The candidate putting out the misinformation says, 'No, you don't have my permission, you can't do that'. That's an example of how, in theory, this law can serve to aid misinformation as well as to stop it. They are my comments for this inquiry on section 196 and I'll have more to say about it in the next one.

**Ms O'CONNOR** - We were assured by the TEC yesterday that in relation to the Juice Media incident, they had legal advice to back them up. Obviously, we haven't seen that legal advice, but at the time, the producers of Juice Media described the TEC's actions, or section 196, as being weaponised to silence critics. Do you think that's the effect it has, or could have?

**Dr BONHAM** - I think that a complainant can use this situation to try to get somebody or something shut down. I'm not saying that the TEC has any intention of helping them. I'm just saying that if you throw in enough of these complaints and if there are strange legal interpretations going around, then some of them are going to stick. In this case, I think it did no harm in terms of what was lost, because it's only Juice Media being silly; it's not a critical debate within Tasmania. The precedent there that this could affect a more serious debate within Tasmania is very concerning to me.

**Ms O'CONNOR** - There's been submissions made and also debate in these Houses that Section 196 provides some protections for candidates from malign posts or misinforming posts that are put up during campaigns. It's been an argument, sort of quite frequently, in order to not pass amendments to Section 196. How do you think we balance that need to look after candidates' wellbeing during a campaign, and make sure that we're running democratically robust election campaigns?

**Dr BONHAM** - I did see some of the concerns being raised, in particular about pictorial abuse that candidates have been subject to - particularly probably a concern for female candidates. I will say that I, myself, have been subject to very much worse pictorial abuse in



my capacity as moderator of a chess forum. I mean, it happens to people in public life. It is a risk.

It is true that this section provides protection from some of these things. There are other forms of protection that can be explored, for some of them. I might actually go into- I think there should be- the issue of artificial intelligence, people putting out fake videos, deepfakes, dodgy photoshops, that kind of thing - I think there is scope for specific regulation of those.

I would see that as part of a broader new thing that I haven't seen any counterpart for in electoral legislation, but something where you can't misrepresent the source of material that you're using. You shouldn't be allowed to use fake photos. You shouldn't be allowed to use material that imitates another party and deceives the voters into thinking that another party put it out, like a fake how-to-vote card. You shouldn't be allowed to put out material that imitates an electoral authority. You shouldn't be allowed to misquote other candidates - to say that a candidate said something, put it in quote marks, and they didn't actually say it.

Those are relatively simple things to put legal tests up for. They don't get into grand debates about what is truth, which some of the more contentious applications of truth in electoral advertising can. Those are things that I think there is room for regulating and improving. There are some of these things that I think can be addressed by separate legislation.

Ultimately, the problem with this Section 196 is that while it provides some protections against things like negative advertising with facial images and things like that, the cost is too high in terms of the law being impossible to understand and the law infringing on free speech in a manner that is, in my view, unconstitutional without doubt. I think that Tasmania will be in extreme trouble if it had to defend this law in a case. You have to show that it's proportional and well-adapted, and we're having trouble working out what even the reason for it being worded the way it is. How do you defend that? That suggestion that I put forward is that there should be laws against material that misrepresents the source of what it's putting out.

**CHAIR** - I appreciate that suggestion. I think that's an area that is worth exploring much further, because any observers - and no doubt we'll do that further in our more focused inquiry on this matter as well, so we don't need to dwell on it today, necessarily. As you would have observed in the debate in the upper House, and the reluctance about removing Section 196 without consideration of potential other options to put certain protections in place being done alongside it, I don't think - I can say categorically, actually - no-one in the upper House was arguing Section 196 is functional and should be kept. Everyone recognises it needs to be addressed but is reluctant to put aside the protections it does offer without putting something in place to provide some of those through another means. I appreciate those suggestions that you've made there and I think that's something we can look at further. It's still fairly light touch.

Under your suggestions, for example, you could put an ad out or put something out on social media that said, 'Candidate A, using their name, John Smith, said this: 'Da-da-da-da-da'. If you put speech marks there, you could be pulled up on it, but if you didn't put speech marks there, presumably you wouldn't be pulled up on it, because you're not quoting them, as such. There's still some sort of light touch things there that are pretty easy to get around, aren't there?

**Dr BONHAM** - Yes. In a lot of cases that's because interpretation is subjective. We were seeing this with the submission from Roland Browne talking about how to interpret all the things that were said about the stadium. One person may interpret some of those things one

way and say, on the basis of their interpretation, what someone has said is clearly false. Another person may say, no, hang on, I think this is a reasonable interpretation; this is my reason for thinking this is a reasonable interpretation of what they were saying. You have to look at each case in detail. Interpretation can get subjective. That's why I was only suggesting that you shouldn't be able to misquote someone, to make a completely false statement that someone said something. That's not necessarily something that has to be included, but I'm just offering that as an example of something that I'd be happy to see regulated.

If you look at other jurisdictions around the country where people do have free rein to say things without section 196 and without truth in electoral advertising laws, in most cases, there is a lot of negative campaigning that goes on, but people take it with a grain of salt. There is nothing in there that is as bad as keeping section 196.

**CHAIR** - It's interesting, though, you say people take it with a grain of salt, but actually the reason people engage in negative campaigning is because it does work.

**Dr BONHAM** - Because it's seen as working.

**CHAIR** - That's right, so there's a genuine problem to be solved there, isn't there? Another interesting consideration, and again, I don't think anyone's arguing we should keep section 196 in a permanent way. I think everyone is acknowledging there's something that needs to be addressed with section 196, for sure. The other interesting thing is the intersection between, if we remove section 196 -

**Ms O'CONNOR** - Or amend it.

**CHAIR** - Or amend it.

**Ms O'CONNOR** - Which is the proposal from Government.

**CHAIR** - Yes, which constrains it down to a fairly minimal-

**Ms O'CONNOR** - An advertisement, a how-to-vote card.

**CHAIR** - Under that proposal. It's an interesting intersection with the fact that, for example, in our upper House elections, we have limited campaign spending. We have a limit. For example, the ability of an upper House candidate during the course of a campaign to try to effectively counter misinformation that might be being put out about them, in a way that permeates the electorate, would have to have some money spent on it. That introduces costs you that might not have planned for in a pretty tight election campaign spending cap that we have. There are interesting considerations and things, because while there's no spending caps for lower House elections and candidates there could choose to spend whatever money they felt was necessary to be able to counter messages or inaccurate things being put out against them, upper House candidates are more constrained to do that, for example. There's some interesting interplays to think about there, I think.

**Dr BONHAM** - I am a long-time supporter of raising the spending caps for Legislative Council elections.

**CHAIR** - It's a shame, though, if we were doing that in order to provide money to counter

**Dr BONHAM** - That should occur. They are too low. That's not something that I would have a problem with.

**CHAIR** - Yes, I'm not sure raising the caps so people can fund countering negative ads is the thing we'd be aiming for.

**Dr BONHAM** - No. Well, they should be raised anyway.

**CHAIR** - Thank you. That's another thing I'm sure we'll talk with you about at some stage, because we're likely to turn our mind to that. Other questions on section 196?

**Ms THOMAS** - No, I think mine was covered by the questions from Cassy.

**Ms JOHNSTON** - Yes, just briefly. Obviously, the issue here is around the definition, the rather absurd definition, of advertisement in this particular instance and I'm interested in your thoughts on how, what is clearly a mock advertisement, a satire video captures things like TV shows and things like that, that might be concentrated on an election. I am not aware of any particular TV shows captured Tasmania's elections, but there could be in the future if this kind of continued definition of advertisement is so broad as to capture mock satirical content.

I'm thinking of things like Mad as Hell, for instance, which might have a little skit which could be published quite broadly on YouTube during an election campaign highlighting parties, platforms or whatever it might be. Just the definition of advertisement is quite broad, isn't it? In terms of its application, what the TEC is saying it supplies to.

**Dr BONHAM** - Yes, I think we need to actually see the verbatim advice at some point because I'd be very curious to see what exactly has been argued here and who has argued it. It will be interesting to see comments on it from other electoral lawyers and so on because it just seems mind boggling that you can get from the legislation to that.

**Ms JOHNSTON** - We have a proud history in this country of being able to mock our politicians.

**CHAIR** - For clarity, I think what I took from the comments yesterday from the electoral commission, I think that it connects across to the definition of electoral matters in the other piece of relevant legislation and where they're there for the interpretation is any material that is seeking to influence the vote is regarded as an advertisement.

**Dr BONHAM** - Yes, it has to also include - yes.

**CHAIR** - I think there's some correlation there between the two pieces of legislation and the definition that sits in the *Electoral Matters Act* or something alongside the *Electoral Act*, so I think that's the gist of it. That's what I understood. I might be verbalising the Electoral Commissioner in saying that, but I think the legal advice is based on the definition there about the intent being to influence the vote in an election.

**Dr BONHAM** - That establishes that it is an electoral matter, but it doesn't establish it as an advertisement. That is what concerns me, is this word 'advertisement'. We have this situation where advertisement is suddenly almost anything. I've actually wondered if it's this broad, is my website an advertisement?

**Ms O'CONNOR** - Just on that issue, I know you've got another question, but the TEC during the Huon Legislative Council elections classified a Facebook post I did with our candidate, talking about the Labor candidate as an advertisement and I got the 'please pull it down' notice, which we didn't comply with. Our legal advice was that section 196 would fall over in the High Court should it be pushed that far, but my question to you is sort of a more broader question about how it applies. One of the concerns that we have as Greens is that it provides a level of protection to candidates and MPs, so a class of people in our society, that is not provided to anyone else from online misrepresentation or abuse. Would you agree with that proposition?

**Dr BONHAM** - Totally agree.

**CHAIR** - Do we want to run through some other matters that you had there, Kevin, while we have time remaining?

**Dr BONHAM** - These will not be as long and involved I think, so I will run through them all together. I've already run through the sort of ideas of covering material that misrepresents its source, that kind of thing.

Data entry was raised by various people in submissions discussed yesterday. The TEC are progressing towards data entry of ballot papers. It's been done in local government, works well in local government elections in Tasmania. Important things are rigorous testing beforehand. For instance, I think the ACT's count of the 2020 election was found to have minor errors in it. Their implementation of the legislation was not quite correct. Tasmania's is quite simple so, but needs to be rigorously tested.

They published the vote data files, which is an insurance against the sort of hacking kinds of concerns that were being talked about in submission no. 4, I think it was. Anyone can check the voter files for themselves and if they've got a good enough knowledge of the system, they can re-simulate the election and make sure that the election was correctly counted and people actually do that with senate elections and with the ACT elections. There is a lot of assurance out there that at least what is being counted reflects what's in the data files and so on.

**Mr BAYLEY** - Is that a rejection from you of the sort of proposition and the need for an independent audit?

**Dr BONHAM** - No. I think that if you have data entry there should be an audit of the data entry against the physical ballot papers that assesses the matching rate. I was involved with the introduction of computer counting for local government and I know that in that case, we found that the data entry process actually improves the accuracy compared to the manual counting and picks up more informal votes you wouldn't have picked up otherwise.

With the Senate process, some of the data entry accuracy results have been not that good in my view. I think there is an issue in the Senate with the speed of data entry. They're racing because they've got so little time to get the count done and that may be causing a few

mismatches. That's something that needs to be looked at. You want a very high level of accuracy accurately reflecting what is on the ballot paper and you want the time for people doing the data entry to do that.

That ties in with some of the points made in the Labor Party submission 28. They talk about the comparison in counting time between Tasmania and the ACT, but some of that difference is caused by Tasmania allowing more time for postal votes to come in. We allow 10 days and the ACT doesn't allow that long.

The ALP submission also talked about electronic voting where people go and vote in pre-polls by electronic voting. The electronic votes are available on the night. It's a high proportion of the electorate. The ACT can do an interim preference distribution on the night of those pre-poll votes, and it meant that for this year's ACT election, on the night I basically knew where 23 of the 25 seats were going. The exceptions were one with in-party contest, where they moved around a lot, and also one contest between the Greens and the Liberals where the Greens did much better in the on-the-day voting.

It does enable a much faster idea of who's getting elected when you can do that, but the ACT has differences with Tasmania that make that work better. One of them is that they have a very concentrated population so you can get a very high proportion of the voter base going and voting electronically in a small number of pre-poll centres, and that makes it easy to get an electronic count that's representative of the ACT.

In Tasmania, populations are more dispersed and voting patterns vary far more between different parts of the state. It's going to be hard to deliver the same thing on the night as the Labor submission is suggesting; it's a bit optimistic about what can be done.

**CHAIR** - Do you think there's an opportunity for that to create some more contention, in fact, if we had the same thing here with people trying to forecast on the night based on the information from the pre-poll, which in our state has less consistency, and therefore certain projections being put out there into the public domain which then don't come to pass when the reality of the count from the polling day comes through becomes then question raising and problematic?

**Dr BONHAM** - Yes, that is something that would have to be looked at in detail before implementing any such system, how representative it might be and whether it would lead to unrepresentative projections. I saw a little bit of this in the ACT. At a certain point I was saying I think the Greens are more likely than not to actually win this final seat and there were people and comments on media pages saying, 'But the distribution produced yesterday still said that the Liberals are winning', that sort of thing, not taking into account that we know that the votes in that distribution are not representative entirely and that we know that things are going to change when more votes go in, that sort of thing.

It would be concerning if you had interim distributions coming out on the night that were not close to representative of the final votes and that had a pile of wrong winners. In local government elections you get a fair bit of complaining about interim distributions that occasionally have the wrong winners and what I'm always saying to people is if there's 12 candidates elected and you're eighth, ninth or 10th, you may well get elected but you shouldn't take it for granted just yet. You should wait till the end because it can move around. I would have concerns about whether they can be representative.

**Ms JOHNSTON** - On the delays in terms of counting, obviously one of the reasons is that we wait for the postal votes to be returned and that's impacted by things like public holidays and all those kind of things. With local government elections the postal ballot has to be returned by a polling day, whereas it is possible in state elections to post your ballot on polling day or perhaps a day after, as long as it's returned within 10 days. Do you have a view about whether it's desirable to cut back that time for postal ballots or to have it such that you have to have it returned by polling day, as in the case for local government elections?

**Dr BONHAM** - I'm sorry, in regard to local government elections specifically?

**Ms JOHNSTON** - No, state elections.

**Dr BONHAM** - I am totally opposed to reducing the postal return time for state elections. I think people will need to get over this thing about complaining about elections taking two weeks to count. I think it's very important that we take the time to do democracy properly. There are places where you have to have your postal vote in by the day, which I think is inferior. We heard evidence yesterday that even with the current allowances, I mean Easter may have compounded it but even with the current allowances, having troubles with getting a proper franchise for people who want to vote by post from overseas. I think people should get used to it. People often blame the Hare-Clark system for the length of time it takes to count and don't realise that most of this is waiting for postals so that people who vote by post get a fair say and the election is as inclusive as possible. It is the same thing with a whole bunch of other elections. In federal elections people say the election takes so long because of preferential voting. No, it's mostly because we're waiting for postals, so I'm totally opposed to cutting back the time.

Submission 12 by an anonymous person made some suggestions about things for speeding up the count. I think those should be looked at. They made some comments about an issue with postal votes and checking whether people have voted twice and potential delays. I only saw that last night. I haven't checked whether that has any merit but I hope that has been run past the TEC for a comment on whether it's an issue and if it is, I hope it is addressed, but I don't know if it's a problem.

The Jacqui Lambie Network submission, submission 25, continued some of the comments about the Liberal Party buying an attack site that had been made during the election campaign, where the Lambie Network was saying that the Liberals had spent some very large amount of money on this website, in their submission they said \$20,000. The evidence they presented in the campaign were way-back captures that showed that a long time before the site was purchased, it had been advertised for sale at high prices. They didn't present any evidence regarding the actual sale price that had been paid, and the Liberal Party was saying it was actually a small amount.

I find it concerning that you have a political party making a submission that is making claims about how much money was spent on a website but not backing them with any kind of evidence and the evidence they previously presented was not credible. It will be interesting to know whether they actually have any basis for that at all. Then they go on to make comments about the site being illegal under misleading electoral material laws, not understanding misleading electoral material laws don't apply because they are restrictive. I was concerned to see the Jacqui Lambie Network making those comments that I don't think are accurate.

**Mr BAYLEY** - Can I ask a question on that? While we're on the Jacqui Lambie Network, do you have a view on the notion - I think it was the first time we saw it effectively this last election - whereby a party that's running a suite of candidates effectively has its campaign run by a figurehead who sits in another jurisdiction and isn't actually up for election in the election being contested. I just thought about that, and the responsibility, I guess, of media in particular, in that regard. I can't imagine the Greens running a campaign and having one of our senators be the spearhead, and I can't imagine the media giving him, in this case either of them, the space to do that. Yet in this case, it was seen as legitimate and standard. I just question it, from a media perspective, that the key campaigner and election campaign is already elected in another jurisdiction, or another House, and there's not scrutiny of the candidates themselves. Do you have a view on that?

**Dr BONHAM** - Yes. I think probably the key point that needs to be got across about these parties is that there is a long history of parties named after a person being unstable, which we have seen continue in this case. If you were voting for one of these parties, then buyer beware, because there's such a record of instability in these cases.

Scrutiny of candidates - it's for voters to decide who they're going to vote for. It is a concern that these campaigns appeal to a low information-type voter base who may struggle to comprehend that they're not actually voting for Jacqui Lambie, in cases. There was some interesting voter behaviour on the Lambie ticket. Scrutineers noticed that a high proportion of voters for the candidates on the Lambie ticket were voting 1-2-3 down. I don't have an exact figure on that, but I did notice during my own scrutineering that it was quite common, the 1-2-3, 1-2-3, 1-2-3 down the Lambie ticket, whatever order they came up in, not suggesting a high level of awareness of the individual candidates. People vote for what they want to. It's hard to stop them doing that.

**Mr BAYLEY** - It's an issue for the media to consider who they platform in the context of an election?

**Dr BONHAM** - Yes, I guess. Yes. It's good for media to be scrutinising actual candidates and making clear to voters that you are voting for candidates and these are the candidates you are voting for. This is something that I try to do. I try to cover candidates in depth, and not just parties.

**Mr BAYLEY** - Thanks.

**Dr BONHAM** - I don't have any systematic comments about the media's coverage of that.

**CHAIR** - Thank you. Are there any other areas that you wanted to mention while you're here? We're just coming to the end of our time.

**Dr BONHAM** - Yes, the last one is the submission from Richard Herr - talks about section 88(3), the Governor having to appoint the Premier within a deadline. I don't agree that that causes the kinds of situations we saw in 2010 with all the sort of debating backwards and forwards about what we're going to do in minority government, because we've seen the same situations in mainland states as well. We saw the same thing in Queensland in the recent election, where they were jockeying backwards and forwards about what was going to happen

if there was a minority government, even though a minority government was, on the evidence, a very unlikely outcome. However, I do think that there is a problem with that requirement that the governor must appoint a new premier within - new ministers - within seven days. I do think that it probably runs risks of encouraging governors to make rash decisions and to place too much importance on how they're doing it. I think that in both 1989 and 2010, there's been criticism of governors going further than they needed to in terms of requirements for stability or claims, obligations of the premier, and things like this. I think that it will be better to bring that into line with other states.

**CHAIR** - Which would be what?

**Dr BONHAM** - Which would be that the existing Premier continues in office until they're not the premier. They can be not the premier because they resign; they can be not the premier because they go back to the parliament and the parliament votes them out, and recommends that someone else be appointed. There's no reason why you have to make these fresh appointments within seven days. It's a Tasmanian oddity.

**Ms JOHNSTON** - I was interested in your submission about the understanding of the calling of the election. I'm curious - you've identified two misunderstandings about why an election could be called, what flip side of each argument - I'm interested to hear your thoughts on fixed terms. Obviously, we have gone to two very early elections now in a row, and it does cause a great deal of uncertainty and concern amongst the community, and the instability that you've highlighted as either a reason to, or a reason not to, go - it is an issue. Your views on fixed terms?

**Dr BONHAM** - In my submission, I give a link to a lengthy article I've written on my website about why I'm not a fan. Although fixed terms are very good for psephologists, because you know when the election is and you can plan your working schedule around them. That's an advantage. You know, it's always scary when a Tasmanian election is coming up. [Inaudible] 'No, not that weekend, please not that weekend. Don't clash it with the Tasmanian chess championship, that would be a disaster.' That kind of thing.

**CHAIR** - We certainly heard from the Electoral Commission that that is a factor for them, that uncertainty, in terms of planning their work that's needed, and being able to have sites ready.

**Mr BONHAM** - One thing I would say there is that fixed terms are not fixed in certain situations; governments can collapse. When you have situations - you sort of have exemptions for fixed terms, for cases where governments collapse. Governments can even, if necessary, often engineer an early election under fixed terms, if they want to. For instance, they can even move a no confidence motion in themselves for the purposes of this, although it would look kind of strange.

I think with the situations that we've had in the last two parliaments, it's not necessarily the case that fixed terms would have stopped those. Fixed terms are more likely to stop the situation where a majority government just picks an opportunistic time and says, 'We think we'll do well if we call the election early.' I think that is a matter for voters to decide, and voters often have punished governments that have gone too early, cynically. Gray was an example. Gray went too early and was kicked out. There was one in Western Australia - Carpenter went



## **PUBLIC**

needlessly early. Kicked out. There are other examples of that, as well. Voters are wise to it if a party is going much too early for no good reason.

I think it's good that an election was called in a circumstance in view of the previous parliament having lost its mandate, in the circumstance of the defections, and for many other reasons as well. In terms of the issues, the personalities that the 2020 election was fought on, by the stage of late last year, early this year, what was going on in parliament bore no resemblance to that at all. It was sort of like, 'Let's keep Peter Gutwein in the premier's chair so he can give us a strong, stable majority government that will protect us from COVID.' Well, maybe the chair is still there somewhere, but all the rest of that stuff had gone.

**CHAIR** - I am mindful of time. Do you have another one to follow up on that, just briefly?

**Ms JOHNSTON** - I think we can leave it until later. Maybe we might have to ask Kevin a question later on.

**CHAIR** - Mindful of time, then, I'm going to thank you for the time you spent with us today, for your submission and the extra detail covered in today's hearing.

**THE WITNESS WITHDREW**

**The committee suspended at 10.05 a.m.**

**The committee recommenced at 10.15 a.m.**

**CHAIR** - Thank you, Ben, from the Shooters, Fishers and Farmers Tasmania. Thank you for joining us for this hearing today with the Joint Standing Committee on Electoral Matters with our inquiry into the 2024 House of Assembly general election and the 2024 Legislative Council periodic elections. We're pleased that you're able to come and speak to your submission.

I'm going to make some opening formality remarks before we begin. Actually, before we start that, I'll introduce you to the committee members. Also online joining us is Simon Wood, who's the Liberal member for Bass. Here at the table, in the room, we've got Cassy O'Connor, who's the Greens member for Hobart, Kristie Johnston, who's the independent member for Clark, Vica Bayley, who's just arrived, the Greens member for Clark, Bec Thomas, who's the independent member for Elwick, and I'm Meg Webb, the independent member for Nelson. Those are the committee members who are here for this hearing. Before you begin to give your evidence, I would like to ask whether you've received and read the guide sent to you by the Committee Secretary.

**Mr HANSEN** - Yes, I have received and read.

**CHAIR** - Thank you, and if so, I'm going to reiterate just a couple of important aspects from that document, that this hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This is a public hearing. Members of the public and journalists may be present and this means your evidence may be reported.

It is important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand?

**Mr HANSEN** - I do.

**Mr BEN HANSEN**, SHOOTERS, FISHERS AND FARMERS PARTY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED VIA WEBEX.

**CHAIR** - That is the end of our formalities. Ben, thank you very much for being present today to talk with us. We have your submission here. It's number 20 in our list of submissions. You're welcome to make some opening remarks if you would like, and then we will have some questions and some discussion.

**Mr HANSEN** - Sure, I've just got a couple of minutes to flesh out a few points in the submission.

**CHAIR** - Totally fine. You go ahead.

**Mr HANSEN** - I appreciate the opportunity to present evidence on behalf of the SFFP Tasmania. Our submission emphasises some primary concerns that we believe will increase

the involvement of the public in our electoral system - the informal vote and voter education being the number one there.

Further to our submission, people are more engaged in activities they fully understand. For an example, let's make up a fictitious election and let's say you get 10 votes, only 10 votes, with 10 candidates for two seats. Could those fully filled out 10 votes be given to the average Tasmanian or the average mainlander and would they be able to work out the correct results with preference voice? I don't like to say it and we don't like to believe it, but I don't think a large percentage of the population would get a consistent result. A question for the committee, what education and government-funded schools are provided to ensure that students understand why voting in government elections matters and also how the correct result is determined? Our party understands that the level of literacy and numeracy, overall, needs improvement, and the informal voting goes hand-in-hand with this. People make typos through not caring about the process as well as overall literacy levels.

We've got media bias, as well. As an example, I believe Anthony Green, only, mentioned our party's name for the first time in the last state election. This is after us being very strong contenders in many previous elections. Smaller parties and candidates do not get fair and equal coverage from government-funded media and this seems to - fairly plain to see, and we urge the committee to put in place any regulations to strengthen the level of the playing field, especially when government money is used to create content.

We've got the advertising enforcement and regulation as well. For example signage is a really big one for us. For the last state election, the campaign was from February to March, four weeks. If any complaints about improper signage are taken on board and actioned, it takes about a week, so in a month-long campaign, that's 25 per cent of the overall campaigning time that incorrect signage is up there, even if it is fixed at all. For smaller parties and candidates where signage is crucial for their campaigning, that's a huge thing.

Lastly, there is the financial influence, which is mentioned in many other submissions and is a widely covered topic about money in politics and campaigning, so I won't hash on that too much. Cheers, thanks very much for the time.

**CHAIR** - Thank you for those opening remarks. We will go to questions. I know Mr Bayley's got a question.

**Mr BAYLEY** - Thanks, Ben. Just a quick question in relation to your submission and what's in the paper around media and media bias. We're all going to have grievances with media along the way, let's admit it, and with our last witness I raised an issue around media platforming a spearhead of a party that's not actually contending an election and is actually elected to a different House, but I'm interested in what your proposition is around regulations on media, acknowledging that, certainly on the public broadcaster, there is space for the major parties and the Greens to have an advertisement, let's call it. What is your thinking and proposition around regulating the media and does that start to stray into some sort of dangerous territory around directing media and their unfettered ability to cover stories and elections on its merits based on their judgments?

That is acknowledging, of course, that we don't always agree with those judgments, but I guess I'm just flagging some concerns around regulation and what that actually means in terms

of legislation or parliament directing media to do something in a certain way. Can you flesh that out a little bit?

**Mr HANSEN** - Very good question. Free speech and all that sort of thing is a very hot topic at the moment. In this case, we already have regulations. I'll primarily talk about the ABC because they're government-funded, so this is where the government itself is paying for advertising for a political party or the government itself is creating, in effect, advertising for all political parties just by talking about them, right?

In this instance, what we would see as a good solution is just making sure that anybody who is contesting an election gets a voice to talk to the ABC, to talk to the public, about what their policies and positions are. I understand and fully appreciate that freedom of speech and freedom of the press is very important, but the issue that we're having is just complete silence. Being reported on in a negative or a positive light at all might be an improvement for us at any stage, so I'm really not saying that they can't report about something, more so encouraging that they give equal airtime to anyone who's contesting an election.

**Mr BAYLEY** - Have you put any thought into how you would regulate that?

**Mr HANSEN** - Our submission is more around what the ideal solutions would be, so the actual implementation - 'Let's get these ideas out and rank them as to what's going to be the best to do' - and then we'd probably look to see if the Shooters, Fishers and Farmers Party can help in consultation as to how to implement all that. We're pretty happy to do those sorts of things, but at the moment I think we want to just get out the best solutions for the problems that we have.

**Mr BAYLEY** - To speak up for our colleagues in the media, I do see a distinction between coverage and advertising. I don't know that I personally accept that covering an election and giving coverage to a party or a candidate equates exactly to advertising necessarily. I hear your point. It's promotion but it's not advertising and the media, I'm sure, would strongly defend their position that it isn't advertising, it's news and current affairs and it's responding to audiences and interest and topics of the day and so forth.

**Mr HANSEN** - Wouldn't that then mean that anybody who's contesting a seat's policies and platforms would be newsworthy?

**Ms O'CONNOR** - Maybe, but not necessarily.

**Mr BAYLEY** - I guess it depends how it's put, how it's characterised, what the issue is. Let's face it, there is not enough space or column inches to cover every candidate and what everybody says on every issue. That's just a fact of life and -

**Mr HANSEN** - A good thing about the internet is you don't run out of column space.

**CHAIR** - Can I follow up on that, Ben, and ask you a question? Do you think there's a role here also for information on candidates to be made more readily available through other means, for example, through the Electoral Commission? We know that for local government elections, for example, the Electoral Commission has a certain way that it presents information on candidates. It's not the same for state government elections or upper House elections. Do

you think that there's a role there, thinking beyond media to other ways that we can provide equitable platforms for candidate information to be shared?

**Mr HANSEN** - Yes. If the TEC, when they have a successful applicant to contest a seat, they have like a Wikipedia page for that candidate and their policies and that sort of thing, so the TEC shows that this person is competing for their seat. Yes, I like that idea.

**Ms THOMAS** - Further to that suggestion, most candidates produce an election flyer or brochure that outlines their position on certain things or their priority issues. Do you think having one central platform for that information to be shared would be useful?

**Mr HANSEN** - When you're talking about a flyer, yes, so just a digital representation; we're not talking about physical flyers that we're manufacturing. I do like the idea of a TEC-style Wikipedia page for the candidates who are contesting elections, a consistent place where they can be seen. It's not like where a journalist can write only about Liberal and Labor Party policies and then ignore everything else. It'll be one site that has these seven candidates sitting for this particular seat and these are their policies that they've submitted to the TEC.

**CHAIR** - I guess that ties in with some other issues that have been raised with us from other perspectives too, for example, about accessibility of voting material for people to access. We heard yesterday from some witnesses here in another hearing that it can be problematic for people to find electoral information in accessible formats for them if they've got particular sorts of disability or potentially even particular sorts of literacy issues or cultural background differences. I presume if we were to contemplate a way to have some centralised way that we provide at least basic sets of information about everyone contesting the election we can ensure that that accessibility is addressed through that measure too. Do you see that as a positive?

**Mr HANSEN** - Yes. My career has been in websites and that sort of thing as well. Accessibility is inbuilt with a lot of websites, with text-to-speech, Braille conversions, font changes or anything like that for readability, yes, definitely. There's a lot of positives from having a consistent candidate platform through the TEC.

**CHAIR** - Do you think also, from the other side of the equation, that creates an expectation about information provision from candidates as well? Something that I've heard regularly raised by people is that as much as they seek information and try very hard to find out more about candidates, it can be very difficult to find information about some candidates put themselves forward for election. For example, a contact email address can be impossible to find at times for some candidates, and members of the public who like to engage with candidates quite actively and might want to send questions or seek information from all candidates to help inform their vote find it frustrating if they're not able to do that. Do you think that there's an imperative that should be on candidates who are putting themselves forward for election to make certain information available?

**Mr HANSEN** - I believe all the information that you stated we've made available in previous elections. Having people approach us and asking more information about our policies and positions would be absolutely fantastic for us, that would be great.

If the TEC wants to put - this is the information that we require from you to publish. It doesn't have to be set in stone or anything overly complex, it's possibly my agile approach from software development. The main thing is not to have a 100 per cent fully guaranteed solution.

The main thing is to get the first iteration up and then improve on it later on. Maybe it's just starting out with a basic project for this TEC site might be somewhere to start and then getting feedback on what does and doesn't work and iterating from there.

**Ms O'CONNOR** - Thank you Ben. To be clear, going back to point 2 in the submission and the points that you raised in your presentation and responses to Vica. You're not actually proposing here that we seek to regulate or legislate to control how the media reports on elections?

**Mr HANSEN** - Yes. We as a party are very wary of freedom of speech issues and freedom of press issues. I would be very wary about actual legislation of things but there may be a case for it in some rare instances.

The submission was about what were the issues with the election? Media bias is an issue for us. Exactly how we go about solutioneering all of that, there could be a number of different approaches to that, but as far as this submission goes, this is an issue for us to contest a fair election sort of thing.

**Ms O'CONNOR** - Some of it's on political parties, isn't it? The Greens, certainly nationally, have sometimes struggled to attract mainstream media attention, so we use all other means, social media, all kinds of comms outreach that we use, recognising that the media won't treat us the same as the major parties because we're not a major party. We've had to get creative and lateral and strategic there.

I wanted to go to your issue about informal voting and the proposition that we need more education broadly across the community, I believe you referred to schools. What you're talking about here is some kind of civics education, isn't it? What would you like to see young people engage with on democracy and how to vote?

**Mr HANSEN** - Yes. Once upon a time, civics was a class and it's no longer. I haven't been to school recently, it was quite a while ago now and civics wasn't a thing then. I only got taught to fill out a tax return at school because I took an elective subject. Overall, how the public interacts with the government has always mystified me as to why they're not taught more often in schools.

We see examples of why these things matter. My example before of the, 'I'd ask everybody to seriously think about how that would go with everyone they know with the 10 votes'. If you've got 10 votes with 10 candidates sitting for two seats and you've got a random preference selection on there, what percentage of the Tasmanian or Australian population would get that vote count correct without any outside help? That makes people feel really disconnected from the voting system overall, we believe.

**Ms O'CONNOR** - To finalise, why do you, on behalf of the Shooters and Fishers, think that a broad civics education program is a positive for the way we run elections and a positive for our democracy? It seems really obvious, but to have you state why it's a positive would be helpful.

**Mr HANSEN** - When you say 'broad civics', that's come up in this here but understanding how the electoral system works in our education department that just seems like

a no-brainer for people to leave school understanding how their lives are going to be governed, and who's in charge of that sort of thing.

Understanding a system means you're more invested in that system working. At the moment, like the sign complaints that I highlighted earlier, if somebody rings up and complains about a sign that's on the wrong property and nothing is done about that sign, that person takes that as an affront to, 'Oh, your voice doesn't matter in this process'. Why would they continue to engage in that?

It's the same sort of thing with the informal votes in the preferential votes. They can talk to using the federal election as an example, the primary vote was 33 or 34 per cent, something like that? If you scale that down to the 10-person example, somebody can ask 10 of their friends who did they put first, and only three or four people say that they put this party first, but they end up winning. They feel very disconnected from what's actually happening. They don't have the time to sit down and have a full inside-out knowledge of how the preference system works

People fully invested in the political process, such as everybody in the committee. Yes, you're going to know it backwards but that's not the majority of Australians. Having that base knowledge that everybody has been given from the get-go just seems like a bit of a no-brainer to do.

**Mr BAYLEY** - Can I say as a comment. I'm sure more can be done in the education system and the curriculum in terms of civics education, I hear you on that, but I do want to note for the record that the parliament here has got a really impressive education program. We regularly have schools through, we have a youth parliament every year; there's staff that have dedicated to it. I'm sure there is always more that can be done, but there is great work being done in that space already. I'd like that noted for the record.

**CHAIR** - It's good to note that. There are always ways to improve and build on good foundations that are there, and that it's a point well made.

Another submission to us did raise similar issues around civics education, and spoke about the opportunity for lowering the voting age to 16 as an optional vote between 16 and 18

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**Ms O'CONNOR** - Yes, that's Greens' policy.

**CHAIR** - and whether that is also a way to encourage more civics education by engaging people at an earlier stage. Does Shooters Fishers have a formal position on that?

**Mr HANSEN** - I don't believe we have a formal position, but I will give my personal position on that. I am not for lowering the voting age. I remember many stupid decisions that I made it at that age, and even once I was over 18. I believe people's mental ability still continues to mature after they're 18. I'm not a supporter of lowering the voting age.

**CHAIR** - Can I move on to ask about the issues you raised on the political advertising and the lack of enforcement around issues that are raised, or complaints that are made? Would you like to provide - because you're only mentioning it briefly in your submission - would you like to provide some more examples that were experienced, for example, in this year's elections, to help illustrate that point for us a bit more clearly?

**Mr HANSEN** - Yes, I did gather up a list, and it's basically all along the north and west. The only council that we've had success in taking actions with the signs was Ulverstone but even then, that wasn't immediate. We're talking about a month-long campaign, so a single day is a significant percentage of the overall campaign time. I don't know if you want to translate the amount of time the signage is out to a number of votes, but when that's a major part of our campaigning strategy, you know, every little bit counts.

**CHAIR** - In particular around enforcement, the regulation you're pointing to is not matters that are under the purview of the Electoral Commission but matters that are under the purview of each local council, which we know varies across different councils. Was that the authority that you were seeking, to get complaints dealt with at a local council level in each instance?

**Mr HANSEN** - Yes, so that's where a bit of the grey area in responsibility comes in. The TEC, which is meant to be controlling elections, and the local councils which, you know, members of the local councils are going to be competing in local elections and stuff, and they're the ones who are governing, or enforcing, the signage issues. Yes, it's a bit of an interesting situation there.

**CHAIR** - It is interesting. It raises, for me, questions which we might have an opportunity to put to the Electoral Commission about whether there is any form of MOU in place between the Electoral Commission and local government, in order to coordinate well around these matters of signage that are dealt with at the local government level at election time. Or if there's communication at the calling of an election between the Electoral Commission and local government to give them some sort of heads-up that this is something to be ready for and prepared for. That'll be interesting to find out more about, actually. Thank you for raising that.

**Mr HANSEN** - Is there, you know, a path for the TEC to collect reporting on signage? Then we'd have some hard, consistent statistics across local councils to monitor the success of this enforcement.

**CHAIR** - I think that's a valuable area to understand more about, actually, because you're right: signage is consequential in delivering results. That's why we all engage in it and want to maximise it - within the law. Any other questions from members on particular areas?

Okay, Ben, we're at the end of our questions. We're very happy if there's anything that we haven't covered that you'd like to speak about a bit further, or have some closing remarks you'd like to make; you're welcome to do so before we finish the hearing.

**Mr HANSEN** - No. I appreciate the opportunity to speak before the committee, and thanks very much for your time.

**CHAIR** - Thanks so much for that.

**THE WITNESS WITHDREW**

**The committee suspended at 10.43 a.m.**



## PUBLIC

**The committee resumed at 11.13 a.m.**

**CHAIR** - Welcome, Neil Spark, from the Tasmanian Constitution Society. We appreciate you giving your time to come and speak with the committee today. These are the first hearings of the Joint Standing Committee on Electoral Matters, which is exciting for our review of the 2024 House of Assembly general election and the periodic elections for the Legislative Council this year.

We appreciate the time put into the submission made and your availability to speak with us. To introduce members of the committee who are here with us, we have Simon Wood, Liberal member for Bass online; Ms Cassy O'Connor, Greens member for Hobart; Kristie Johnston, independent member for Clark; Vica Bayley, Greens member for Clark; Bec Thomas, independent for Elwick, and I'm Meg Webb, independent member for Nelson. We also have Scott on secretariat and Gaye on Hansard assisting us today.

I'll do some formalities to begin and get you sworn in, and then we'll begin with our discussion. So before you begin giving your evidence, I'd like to ask whether you've received and read the guide sent to you by the Committee Secretary.

**Mr SPARK** - Yes.

**CHAIR** - Thank you. I'm going to reiterate some important aspects of that document here on the record for us today. This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings.

This is a public hearing. Members of the public and journalists may be present, and this means your evidence may be reported. It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand these points?

**Mr SPARK** - Yes.

**CHAIR** - Thank you so much. Let's have you sworn in. In front of you, you've got a statutory declaration. I invite you to take that.

**Mr NEIL SPARK**, TASMANIAN CONSTITUTION SOCIETY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** - Thank you very much. Now, typically, you could have time to make a bit of an opening statement if you would like. Then after that, we can move to questions from committee members. Would you like to make an opening statement?

**Mr SPARK** - Yes, I have a few comments that I'd like to make. First, I'd like to congratulate you, Meg, for getting this committee set up. It's important for us. We're all about accountability, transparency and improving democracy, and we think that this committee is a step in the right direction. It gives us, I think, an opportunity to learn from experience and to make improvements for future elections. Also, I think Tasmania is the only state that didn't have a joint standing committee, so I hope that this is the first of many.

For those of you who may not be familiar with the Tasmanian Constitution Society, we were set up in 2011 by a group that included academics and others who were concerned about the cutting of the numbers of the House of Assembly from 35 to 25. We have agitated since that time to have the House restored, so we're very pleased that it has been. Now that that has happened, we are advocates, I guess, for improved transparency, democracy and accountability - all of which I think are important for the working of our system of government.

I just wanted to make a couple of comments about our democracy, and our electoral system in particular. The Hare-Clark system, I think, most accurately reflects the wishes of the people. We should be very proud of it. I don't think it should ever be changed, because it's serving us well.

However, we do have some concerns. I'm sure you're all aware of the Environmental Defenders Office report of, I think, a year or more ago, that labelled Tasmania the most secretive state, which was based on Right to Information performance. That's of a concern to us.

The Integrity Commission has been called 'unusually useless', and there have been concerns about the financial contribution of the poker machine lobby, particularly in the 2018 election.

The other point that I'd like to raise is also truth in political advertising. In commercial advertising, you cannot mislead, and legal action can be taken against you. In political advertising, that's not the case. That just seems, to us, an illogical and unacceptable anomaly.

We think truth in political advertising would improve people's confidence in the political process and elections, and that can only be a good thing. It could also deter potential bad actors. The Australia Institute did a poll in 2021 that you may be aware of that found that 87 per cent of Tasmanians wanted truth in political advertising laws - 87 per cent.

South Australia has had truth in advertising laws for nearly four decades and similar laws were recently proclaimed in the ACT. I know that there are arguments against truth in advertising. The freedom of speech argument usually comes up. How's that managed? Who decides what freedom of speech is? Who decides what's misleading advertising and no-one is pretending that there are simple answers to this. These are complex matters. But that shouldn't preclude trying to improve the law. No law is perfect. We think the advantages outweigh the disadvantages.

Another point of concern to us that we think the committee should consider is the question of education. We know that civics are taught in primary and high schools, but, anecdotally, it just seems that people's knowledge of how the system works is not high. I'd say, in particular, in relation to the Legislative Council, I think that a lot of people don't really understand the council's primary role of being a house of review.

We think that participation in the process and education could be improved by reducing the franchise to 16, but with the proviso that it would be optional, so it wouldn't be compulsory. It would give young people a say and it would also be an opportunity for self education, because if you're thinking of voting you are probably going to try to learn as much as you can about the process.

It just seems illogical that a 16-year-old Tasmanian can be held criminally responsible. He or she can enlist in the Defence Forces, drive a car, leave school, have a job and pay taxes, but can't vote. We think giving 16-year-olds the vote is not a big stretch. It wasn't for Austria, Germany, Brazil and Argentina.

Also, the Parliamentary Education unit. We think it's an educational resource that does an excellent job, but we'd like to see its resources increase so it can extend its work, specifically, perhaps, by travelling to schools unable to visit Hobart and see parliament in action.

Fixed four-year terms are another thing that we would like to see. We think fixed four-year terms provide certainty and stability. There are exceptions to that that are provided for in the submission.

We think the *Electoral Act* should be reviewed. It's been in operation for 20 years and, as far as I know, hasn't been reviewed. In that time, there's been extraordinary technological advances and there's also the opportunity to perhaps improve voter access.

Finally, political donations. We were pleased to see that the Greens are planning to propose a new bill when Parliament resumes next week. We think political donation election funding reform is much needed and long overdue. We were very disappointed to see that the amendments proposed by the opposition and the Greens didn't eventually get up. We think the bill that has been passed has a lot of potential for improvement.

Finally, Legislative Council elections. We support same funding and donation regulations for upper and lower House candidates. It just doesn't seem logical that there is a rule for upper House candidates and a different one for lower House candidates. Legislative Council candidates, as you know, have a spending limit of \$19,500, but a House of Assembly candidate, my understanding is that, under the act as it is, is \$83,000, and that just seems an extraordinary difference that seems to us to be inexplicable, and that concludes my comments, Madam Chair.

**CHAIR** - Thank you very much for that and thank you for the time taken for the submission and the details provided in there. You've covered a spread of areas there, which are all ones that I can understand why the Tasmanian Constitution Society would hold key interest in, so I appreciate the thought.

Can I pick up on one of the things we spoke about, actually, just in our most recent hearing with another witness, around the age of being able to vote and the idea of lowering that to 16 as an optional voting age? You've endorsed that as something you see fit. One of the criticisms that is potentially raised against that proposal is the idea that people are quite young at 16, they are not necessarily fully developed in terms of their capacity and their consideration of things, and that it would be, to paraphrase, irresponsible to lower the age of voting simply because of the issue of capacity not being there in a reliable way.

Do you have a response to that or is that something that you've turned your mind to, in terms of the appropriateness of this suggestion?

## PUBLIC

**Mr SPARK** - I think that's a fair point, that a 16-year-old perhaps isn't fully developed. I accept that. But a 16-year-old can be held criminally responsible, not only a 16-year-old, a 14-year-old.

**Ms O'CONNOR** - That's right.

**CHAIR** - A 10-year-old.

**Mr SPARK** - Yes. So, if we're saying that they're criminally responsible, then it seems to me that they've got the capacity to vote. If we think that they've got the capacity to enlist in the armed forces, drive a car, leave school, pay taxes, do those things, surely, they've got the capacity to vote.

**CHAIR** - I appreciated that you pointed to some other international examples where that step has been taken because it is always informative to look elsewhere and see what has transpired when those sorts of reforms are brought in. I appreciate that. Thank you.

**Mr BAYLEY** - And just to add, the proposition is that it's optional, which addresses some of the issues around cognisance and engagement and so forth in that it would only be people who are politically engaged who do take up the opportunity.

**Mr SPARK** - Yes, I think that's an important point, that you'd have to want to vote and that there would be no penalty, if you were between 16 and 18 and decided not to. That's why I think the people who may want to do that should have that opportunity. It's a choice. There's no compunction from our point of view.

**Ms JOHNSTON** - Thank you very much for your submission. As Meg said, it goes around a whole range of things. I'm particularly interested in the society's views around fixed-terms. We've gone to two very early elections in a row now. There is a degree of commentary in the community about uncertainty and stability. Can you perhaps elaborate on why you view fixed-terms as important in the democratic process?

**Mr SPARK** - I just think it gives certainty to everyone in the community and I think we hear a lot when we're talking about majority government, we hear a lot about the fact that the business community likes majority government because majority government provides certainty, and I agree that it does. Majority government does provide certainty, but it doesn't guarantee it. We have seen twice now a majority government, well, not a majority government last time, but it certainly was the time before that an election was called.

We support fixed-terms because we think it does provide stability. Everyone knows that in the United States, the election is usually on the second Tuesday in November, not much else is stable or certain about the United States system, but that is. We think that those exceptions that I alluded to in cases of no confidence and that kind of thing, it doesn't preclude that happening, but I think it does provide a certainty. Also, for a government to, you know, map out a plan with certainty that they've got this time to fulfil their promises.

**Ms JOHNSTON** - Thank you.

**CHAIR** - Following up on that, if I might, the other thing we heard yesterday when we spoke with the Electoral Commission was that for their purposes, uncertainty around when the

election is going to fall is a difficult thing to plan for and to plan to have the resources available, the locations and arrangements available. There's that practical side of it as well. Would you see it as having a levelling effect potentially, if the government of the day isn't entirely in control of the date? It's a set date, unless the unusual circumstances you've outlined occurred, but under normal circumstances, it would be a fixed date that was understood by all and, therefore, all candidates and all parties who plan to contest that election know that full well from well out and can plan into it.

**Mr SPARK** - Yes, there is a practical side of that to which you've just alluded that everybody knows when the date will be and can plan accordingly. That would be a great help to the Electoral Commission too, to be able to plan ahead knowing that there's going to be a House of Assembly election at this time. We know when Legislative Council elections are, and here again is another anomaly between the two Houses.

We have certainty for the Legislative Council, but not for the lower House. It is the same thing for the Legislative Council candidates, you can plan well ahead knowing with certainty that that's the date of the election. You could argue that the exceptions that I've alluded to, votes of no confidence and that sort of thing, undermine the principle but, I might be wrong here, everyone in this room and in this parliament doesn't want early elections. We all want stability, no matter what party or political colour you are. I believe everybody wants that stability. People want the term to go for as long as it does. Those exceptional circumstances would be indeed that, exceptional.

**CHAIR** - Thank you.

**Ms JOHNSTON** - Would you agree that the fact that we don't have fixed terms at the moment provides an advantage to the government in terms of calling of elections. They know the timing of it, and it's kept secret by them? I know from an independent's perspective that you start watching to see when billboards might be booked out, for instance, to give an indication when the government might be thinking to go. Do you believe the current system at the moment provides a significant advantage to government, government members, government candidates at the moment in terms of the electoral process in terms of a front running?

**Mr SPARK** - Yes, I think so, unquestionably. It's in the gift of the Premier. The Premier obviously is going to call the election at the most politically advantageous time to her or him. I agree and if we have this certainty that would take that component out of the equation. You could argue that it does give the government of the day an advantage for sure because they can aim for an election in six, eight, 12 months' time, but start working towards that without anyone knowing that is when it's going to be.

**Ms JOHNSTON** - On the flip side, a disadvantage to independent and to minor party candidates, for instance, who might not be engaged in the process until they think it's due in four years.

**Mr SPARK** - Yes, that's right, and then suddenly find out that there's an election. I believe that's important as well because as we saw in the last House of Assembly election, the percentage of the vote for independents, and we could class the Jacqui Lambie Network, for argument's sake, as independents, if we bring them into that group, the percentage is quite high. It might have been 14 or 15 per cent or maybe more.

The community has a voice there that needs to be respected and that's another argument for fixed terms. I don't believe that the major parties would be too enamoured with it, but again, why is Tasmania out of the loop here? Everywhere else, except the federal parliament, my understanding is, has fixed terms.

**Ms JOHNSTON** - Thank you.

**Ms O'CONNOR** - Thanks very much, Neil, for your presentation. I wanted to explore with you a subject that the Tasmania Constitution Society's been very passionate around for decades and that is the restoration of the numbers in the House of Assembly to 35 seats. We've elected a 35-seat assembly. Do you have any observations on how the 35-seat election was run and, in your view, whether a 35-seat House as elected has improved democracy and governance potentially?

**Mr SPARK** - Yes, I believe it has. I've been to parliament at the House of Assembly a number of times since the election and I've been before the restoration. I sense that there's a marked change and it's a change for the better. The change has been expressed in a number of ways. Limits, for example, on the length of time that questions can be asked, I believe it's one minute to question and a minister has three minutes to answer. When those three minutes are up, the Speaker calls it, which is how it should be. The abolition of Dorothy Dix questions is extraordinarily good.

In my past, I was a journalist and I remember working in the NSW Parliament and the Labor government abused the process so badly, it wasn't of interest. These Dorothy Dix questions were part and parcel of question times as I'm sure they were here and in other jurisdictions; that in itself is a great improvement. I sense, on the Floor of the House, dare I say, some goodwill that people want this to work and it should work because that's what the people have said they want. It is up to the politicians to make it work.

In recent times with the ferry fiasco, which is an absolute unmitigated disgrace and I'm sure everybody here would agree with that, I'm not convinced that Michael Ferguson would have resigned if the Liberals had been a majority.

**Ms O'CONNOR** - I'm pretty convinced he wouldn't have - given on the previous form of Liberals in majority when governments misbehaved or walked up to the lectern and told a barefaced lie, which did happen. So I think that's right.

**Mr SPARK** - I believe that's an example of the parliament holding the minister to account, which is the whole basis of the system, that's a fundamental pillar of our system.

**Ms O'CONNOR** - Thank you. You would agree that democracy requires constant fortification and attention and in the submission there's a number of reform initiatives which the Tasmanian Constitutional Society has put forward. There's capacity here to reform the *Electoral Act* and do a whole act overhaul, which the TEC yesterday said was probably about time and you have said it too. If we could make some amendments now short of that wholesale review of the acts, because there are a couple of acts in play here, what would the Tasmanian Constitutional Society regard as the most elemental and necessary improvements?

**Mr SPARK** - This probably isn't directly to do with the *Electoral Act*, but donations laws would have to be very high on our list of priorities. I know that doesn't touch directly on the Electoral Commission.

**Ms O'CONNOR** - It does now because they'll oversee the disclosure and funding framework.

**Mr SPARK** - That would be the number one most important thing from our point of view. The truth in advertising would be, if we're listing things in order of priority. As I said before, it just is illogical that we've got a rule for one thing, commercial advertising, and no rule for political advertising. That seems wrong to me and it undermines people's confidence in the political systems. How can I believe what's being advertised when I know something's been proven to be false and wrong? I think, what else can I believe? Who else is lying? That undermines the system so that for us would be a high priority.

**Ms O'CONNOR** - Just supplementary to that, connected to that issue of truth in political advertising is section 196 of the act, which has been very topical. That's the provision that prohibits the use of a candidate's name or image for advertising, how-to-vote, it talks about publishing or broadcasting without the permission of a candidate, which has been put to us, and I strongly agree, it can really restrict the free flow of debate during election campaigns. Does the Tas Constitution Society have a position on section 196?

**Mr SPARK** - I must admit we haven't given that a lot of consideration, but I think that the points you make are quite valid. That's something that I guess we would support in principle, but we'd probably need to do a bit more research and receive a bit more information.

**Ms THOMAS** - Thank you. My question was in relation to the truth in political advertising provisions. I note the Constitution Society supports laws for truth in political advertising and, clearly, your submission outlines the reasons why. I'm interested in whether there is a particular model - you refer to South Australia and the Australian Capital Territory - whether you think there is a particular model you would like to see implemented here.

**Mr SPARK** - I think the South Australian legislation is pretty close to what we would like to see. I would say that nothing in life is simple, and this is certainly one of those things. There's a degree of complexity here. I think it's something that we would have to tread carefully with, to make sure that we got the right mix.

**Ms THOMAS** - There is going to be another inquiry, well, the amendments that were proposed to section 196 of the *Electoral Act* have been referred to this committee for review. That will be another matter that we look at separate to this, but certainly we have received submissions through this inquiry into section 196.

Does the society have a view on whether that section of the *Electoral Act* should be retained until we have truth in political advertising laws, or something similar, to provide some sort of protection, if you like?

**Mr SPARK** - Yes. I would agree. I think that we should.

**Ms O'CONNOR** - It's a bit of a worry, though, isn't it, to sort of wait for the perfect - to be the enemy of the good? If we have one area of the act that's been identified as problematic

and there's a view that 'you can't deal with that until you have that', in the knowledge that truth in political advertising is not something that has major party support so it's unlikely to be easily negotiated through parliament.

**Mr SPARK** - No. The two are connected. I can see that. I think the point that you make, Cassy, that why wait for the good to get the perfect - I think if we can act now, why not act now?

**CHAIR** - We might have an opportunity to hear, because I know you did say the society hasn't turned their mind to it specifically yet. When we do look at this in more detail, we may well invite the society to provide further thoughts to us when there's been time for more consideration to be given, for sure.

**Mr SPARK** - We'd appreciate that.

**Mr BAYLEY** - Forgive me if you haven't considered this - it's not in your submission, but I'm sure you probably have. Across the table, we've chatted to a few people, including the Electoral Commission, about the informal vote and about the notion of savings provisions to protect voters against inadvertent errors and the like. Do you have a view on that? I'm sure you've turned your mind to it, to an extent. I was a little surprised it wasn't in your submission.

**Mr SPARK** - You're talking about the informal vote and how we could perhaps mitigate

**Mr BAYLEY** - Mitigate a vote that's got a clear intent, but maybe it hasn't gone all the way through to the minimum threshold of ticking seven boxes or -

**CHAIR** - Numbering seven boxes.

**Mr BAYLEY** - Numbering seven boxes, my apologies. Or numbering two 6s, or just an inadvertent error where there's clear intent there around who is the first suite of votes, recipients of that person's vote, but there has been an error along the way.

**Mr SPARK** - Look, the informal vote in the last election was higher than we would have liked. I think it was about 10 per cent or something?

**Mr BAYLEY** - It was 6.3.

**CHAIR** - Six-point-something. It was up on the last one.

**Mr SPARK** - First, I'd like to say that I think the Electoral Commission does a great job with education. Those ads that they do about numbering the boxes - that you have to vote for a minimum of seven, that kind of thing - is all helpful. Obviously, there's potential to improve that, to try to get the informal vote down. We don't have any specific ideas about how that could be done.

I think if someone, for instance, numbered 10 squares and repeated the number 6, I agree with you that their intent was to vote 1-2-3 for whom they voted, and that was just an unintentional error. Then the question arises, should that be treated as a formal vote or an informal one? Strictly speaking, it's informal.



**Mr BAYLEY** - It is now, yes.

**Mr SPARK** - Maybe there's some potential there for some flexibility. A vote that's clearly informal, where no box is numbered, or there's just a line through it - well, that's clearly an informal vote. I think there's certainly potential to have a look at those instances where the voter's intent is clear but it's treated as an informal vote.

Now, the mechanics of that - that's a whole Pandora's box, isn't it? How could that be managed, and who would judge that? It raises a lot of questions.

**Mr BAYLEY** - It's done elsewhere, and it can be done. It's just a matter of the principle being embraced, and then the nuts and bolts are something that absolutely needs to be worked through. What are the criteria? What are the thresholds? Who makes the decision? Thank you.

**CHAIR** - The society might be quite interested to see some of the evidence presented to this committee on that matter, because it would no doubt be of interest to your members.

**Mr SPARK** - Yes, definitely.

**CHAIR** - The submission from Kevin Bonham and the hearing transcript from the discussion we had from him earlier today will probably be of interest to your members, actually.

**Mr BAYLEY** - Also perhaps the Electoral Commission's contribution on it.

**CHAIR** - Yes, and the Electoral Commission's contribution from yesterday's hearings. As you say, there's quite a bit of technicality to it - but in terms of agreeing on a principle, in terms of the way forward, there are options that can be explored. Knowing that your members are likely to be keenly interested in these details, I can suggest to you those areas to look at.

**Mr SPARK** - Yes, thank you.

**CHAIR** - Any other questions?

**Ms O'CONNOR** - I will. We've had conversations about civics and education broadly, as the committee has had its hearings, and from various different interests. There's been support for an educative process or program. What would civics education look like to the Tasmanian Constitution Society?

**Mr SPARK** - We think it should start in primary school, and at a clear level that would be consistent with those children's learning capacity. We think that's where it should start, and I think that would sort of send a message that this is important, that we're all citizens, and as citizens we all have a responsibility.

Then in high school, you could dig a bit deeper into how parliament actually works. I'd like to see the history of the Westminster system taught - even though you could argue, do we really have the Westminster system? In principle we do, don't we? So, I think that the history should be taught and also how it works. Perhaps more importantly, each individual's role and responsibility in that system. I think, here in Tasmania, we're very buffeted, I guess, from the

rest of the world. When we see what's going on in the United States today with electoral offices being boarded up, Washington D.C. being boarded up because of the threat of violence, these things are alien to us, we cannot imagine that. We're very lucky to be where we are, and I'd like to see that conveyed as well, that not everyone lives like us and not everyone has the opportunity to choose how they're going to be governed and who is going to govern them. They're the sort of things that we'd like to see included.

**Ms O'CONNOR** - Why it's important to vote, too, because when you engage with young - sometimes it can be a bit dispiriting when you talk about the power of the vote to some young people who are disillusioned, not surprisingly. It's that conversation about why voting is so powerful and important in a democracy too, isn't it?

**Mr SPARK** - Yes, it definitely is. I think there are plenty of examples of candidates that have been elected where the margin's been very small, for a few hundred people who change their mind. You could be one of those few hundred people, you can have a real influence. I do think that there is a general apathy about politics and how we're governed. I think it's not high on people's list of priorities. That's why I think if it's taught in schools, that would send a much stronger message than what, perhaps, children are getting now.

**Ms O'CONNOR** - Yes. Also, isn't there potentially capacity for Neighbourhood Houses, child and family centres, so a civics curriculum doesn't become something that's only restricted to the classroom.

**Mr SPARK** - Yes, I quite agree, definitely. There are lots of opportunities there that we'd like to see taken up.

**Ms JOHNSTON** - I just wanted to quickly acknowledge and thank you for your recognition of the Parliamentary Education unit. They do an amazing job. I note in your submission that you talk about extending its work to travelling to schools that [inaudible] to Hobart and I understand that they do on-the-road tours too -

**Mr SPARK** - Oh, great.

**Ms JOHNSTON** - - to the north, north-west, west and east, just for your information, that they do get out to those who can't necessarily come to Hobart, so they provide a really valuable, as you've recognised, resource to schools in particular. I just wanted to put that on the record.

**CHAIR** - I think that's a great thing to put on the record and there are always opportunities to better resource and better amplify that wonderful work that they're doing already, for sure.

**Mr SPARK** - Yes, definitely.

**CHAIR** - It's great to have the endorsement of that in a submission. Thank you.

Thanks also for the area that you highlight around political donations and public funding of election campaigns. I note that you would have, I think, provided input into the committee process that was looking at the donations bill from the Greens. You have noted in your submission that there are recommendations coming out of that committee that certain matters

be referred to this Electoral Matters Committee. That hasn't technically happened yet, but it may be that, down the track, this committee has that formally referred to us and then we look at it in more detail.

Probably, questions and more discussion around that area is something we may well have an opportunity to revisit with you if this committee picks up a further inquiry in that space, but I just wanted to acknowledge that you had some clear principles, obviously, that the society supports around thresholds for donations and around the timeliness of reporting.

Are those the two key areas that you see as most crucial when it comes to donations?

**Mr SPARK** - Yes, definitely. I think underlying this is the need for the public to have confidence in the system. We saw in the 2018 election what happened there, and I think that just undermines people's confidence. If people think that governments can buy their way into office or political parties can buy their way into office, that undermines that that's a problem. It's disempowering because you think, 'Well, what can I do? What's the point of me doing anything when elections can be bought?'. That troubles us and that's why we think that this needs to happen soon. It's disappointing that it's taken this long. I think premier Will Hodgman may have even mentioned it in the 2014 campaign, and here we are 10 years later, still without.

**CHAIR** - Indeed. The public funding matter is, sort of similarly, something we may well look at if it comes to us as a committee as a referral for inquiry. As a member of the upper House, I appreciate you highlighting the discrepancy that's there under what has currently been put into law around public funding availability for lower House elections and no public funding for upper House elections in that sense. I'm not sure that they have to be completely the same because we have different arrangements for those elections in other areas, but certainly whatever principles we're applying in the lower House we should look to be able to apply in the upper House, too, in my personal view. I am just saying thank you for raising that as a matter.

Is there anything you wanted to comment on in relation to the value of public funding of elections and why you, as a society, have identified that as important for our democracy?

**Mr SPARK** - Look, I think if we had public funding, that, again, provides certainty to candidates because everybody knows how much they can spend or not. I think it would give the public confidence in the system and I think it would level the playing field. If I'm a candidate and have a wealthy friend, for instance, who says, 'Look, I will put in x amount of money for you', as we have seen Elon and Trump do in the United States, that might get me into office, but then the friend will come calling when some legislation comes up: 'Payback time. I did this for you, you need to do this for me.' That is why we think that the public funding and strict donations laws would increase public confidence in the system and that can only be a good thing.

Democracy is on the slide in other parts of the world. I think you could even argue 'is the United States a democracy?' But we haven't got time to get into a philosophical argument about that. I think it is important for us, here, to use Cassy's term, 'to nurture' democracy. It's like a plant or a pet. If you don't nurture your pet, it'll eventually die. We need to be constantly aware of that and nurture.

I think that the public funding, in an ideal world, there perhaps wouldn't be donations, you would just have public funding and that would be it.

**CHAIR** - An entirely level playing field, then.

**Mr SPARK** - Yes. So then, if there is no exchange of money, there's no obligation. I think whenever money's exchanged, there's an obligation, or a gift, either financially or otherwise. That puts the recipient in a position of being obligated to the provider of the money. So then, is the recipient going to always act in the interest of their constituents or their conscience or what they should be acting in the interests of?

**CHAIR** - Certainly, if not the tangible obligation, there's certainly risk of perception that there's an obligation, isn't there?

**Mr SPARK** - Yes.

**CHAIR** - Thank you. I think we've had a really great discussion. I really appreciate your time, Neil, both for putting in the submission and also your time here today. Please, thank the members of the society for their engagement. We really appreciate people in the community who are passionate about a healthy democracy in our state. It does take all shoulders to the wheel to make these things become a reality and to, as you say, nurture our democracy here.

I'm just going to close by advising you, as I said at the commencement of your evidence, what you've said to us here today is protected by parliamentary privilege. Once you leave the table, you need to be aware that privilege does not attach to comments you may make to anyone including the media, even if you are just repeating what you've said to us here. Do you understand this?

**Mr SPARK** - Yes.

**CHAIR** - Great. Thank you very much. Before we close, we will be taking a short break from this broadcast and then resuming again at 12:15 p.m. for the next hearing, but for this hearing, we will stop the broadcast.

**THE WITNESS WITHDREW.**

**The committee suspended at 11.58 a.m.**

## PUBLIC

**The committee resumed at 12.13 p.m.**

**CHAIR** - Welcome, Dr Banks, to this hearing with the Joint Standing Committee on Electoral Matters, with our first inquiry as a committee looking at the 2024 General House of Assembly election and the periodic Legislative Council elections for 2024. We appreciate your submission made and your time made available today.

Just to run through an introduction to the committee members, online we've got Simon Wood, who's a Liberal member for Bass, Cassy O'Connor, Greens member for Hobart, Kristie Johnston, independent for Clark, Vica Bayley, Greens member for Clark, Bec Thomas, independent member for Elwick, and I'm Meg Webb, independent member for Nelson.

The committee is happy to have you here today to have some discussions with us in relation to your submission. Before you begin giving evidence, I'd like to ask whether you have received and read the guideline - the guide sent to you by the Committee Secretary.

**Dr BANKS** - I have. Thank you very much.

**CHAIR** - Thank you. I'd like to just read some important aspects of that document here for today's hearing.

This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom without fear of being sued or questioned in any court or placed out of parliament. This protection is not accorded to if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This is a public hearing. Members of the public and journalists may be present and this means your evidence may be reported.

It is important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand these?

**Dr BANKS** - I do understand those and I don't have any concerns about them.

**CHAIR** - Excellent, thank you very much.

**Dr ROBIN BANKS**, WAS CALLED, MADE THE STATUTORY DECLARATION, AND WAS EXAMINED

**CHAIR** - What can typically happen is, if you have some opening remarks you would like to make, you're welcome to do so and then we would move into some questions and discussion after that.

**Dr BANKS** - Thank you. Very short opening remarks. Firstly, to welcome with accolades the establishment of the Joint Standing Committee on Electoral Matters. I've given evidence to the federal equivalent and I think it's a really important part of protecting democracy and ensuring that elections are conducted in ways that best promote a representative democracy, both at the state and federal level. Thank you for those who urged this to happen and for it being established.

I want to make a couple of points. Firstly, obviously, I've endorsed the submission of Disability Voices Tasmania and Blind Citizens Australia Tasmania, and I understand they gave evidence yesterday, so I don't want to repeat any of that. I've certainly been very actively involved in the work with them and I think there are some significant changes that need to happen to ensure that all Tasmanians can exercise their vote secretly and independently.

Obviously, the focus of my submission is section 196 and the proposal to repeal that provision or amend it significantly to limit it only to, 'how to vote' cards. I think it's the worst possible time to remove that protection. It's a very simple mechanism that can be used during an election cycle to limit misleading and deceptive conduct. I know section 197 is there, but that's a much more complex section in terms of how it would be operationalised. As, both a lawyer who's assisted people with complaints about electoral processes but also having been a statutory officer, it's very rare to find a provision that can be acted on in the way 196 can be. You can say, 'you've published this material; do you have consent?' Person says yes or no. If they say yes, then everything's fine. If they say no, then it's clear that there's been a breach. It's a very simple proof, whereas 197 requires a much more complex level of proofs, even if the amendments the Tasmanian Law Reform Institute suggested in their submission to the review were to be adopted.

Unfortunately, what matters is what matters during the campaign period. It's much too late, six months, 12 months later, to get a finding that conduct was misleading or deceptive. It's had its effect. To me, having something that does this bit of work is really important. I understand the concerns about freedom of political and governmental communication, but I would observe that there's a proportionality test and the question really is, is this a necessary protection of the democratic process? It's not ever been tested, so I think there's a reluctance to prosecute it. I know that the Electoral Commissioner raises concerns and people withdraw stuff

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**Ms O'CONNOR** - Or not.

**Dr BANKS** - Or not. The fact that it's not prosecuted means that that's a pretty slap on the wrist reaction, so we will keep seeing it happen because there are no consequences, other than perhaps having to withdraw, by which stage in psychological terms you've probably had the impact you desired.

Something that might prevent people from misleading the public about the positions or what people have said or done or that something's endorsed by a person is, I think, an important protection that should not be removed. I certainly think work could be done to really identify what the problem is that is seeking to be addressed with its removal, because I don't really get it. I've looked at the second reading speech, I've looked at various other documents. It seems to me there is a concern that keeps being expressed about freedom of political expression and that that is stopping any prosecutorial action taking place. I would love to see that piece of law tested, rather than withdraw from it and say, 'Oh, we can't do that'. Let's test it. Freedom of political communication is an important freedom, but so is a democracy that doesn't allow misleading conduct in that electoral process.

There do appear to be other concerns, but they're not as clearly expressed as the one about freedom of political expression. I think if we understood what the breadth of those concerns are, then perhaps there are amendments to the provision and not the one that's proposed that is simply limited to how-to-vote cards, because I don't see what the point of that would be. I really

struggle to understand what protection that provides. In fact, it's the one place I would have thought that you should be able to name who the candidates are because they're listed.

**CHAIR** - They are literally the candidates - factually true.

**Dr BANKS** - Yes, factually true. I think it's worth having a much more thorough discussion about the wrong or the harm that we're seeking to address here and let's address it. I was thinking, could it be that you say you can't use images without consent, but you can use names? I'm not sure if that gets to the harm and the protection, but I think in this time of AI and the capacity to create deep fake materials that suggest that you, Vica Bayley, said this or did this, when it is clearly not the case and you haven't said or done that, then your right to have your integrity as a candidate protected and the electorate's right to know that you didn't say that are really important parts of our democracy.

I think that's all I wanted to say at this stage but I'm happy to answer questions.

**CHAIR** - I'll just kick off there, because I think it is a complex thing for us to contemplate - what is the problem we're solving and also what are the implications around the direction we go to solving that? I understand the concern raised that at the present time there are protections provided by section 196 in terms of a curb on misleading statements and images and things being put out, but, of course, it's also a curb on honest and accurate statements and things being put out into the political public discussion about candidates. There's a concern that we're constraining unreasonably people being able to honestly say, 'This candidate said this', or, 'This candidate holds a position on this matter that is this'. Those things, if they are true, should be an important part of the discussion around that candidate's case for election. Have you got thoughts about the balance about the protection provided about against misleading, but also not unreasonable constraint on honest and accurate information?

**Dr BANKS** - I think that's why my head went to the question about if it was limited to images and visible representations of people like moving images or whatever else, it would still allow you to say X has stated publicly this position or has stated this position on whatever particular hot topic it might be. Then 197 could do the work on that at a later time if you still permitted that. Images are really powerful and I guess it's that idea a picture tells 1000 words. If you present an image, a deep-fake video that has a member of parliament saying something that they've never said, that is highly likely to influence voters in ways that are very damaging to democracy. That's one possibility if you limit the scope of it to images, both still and moving. When this provision came in, in 19-whenver it was - it's been in the *Electoral Act*, I think, since 1911 or 1912 - obviously that wouldn't have been a big deal. People didn't use images and video footage in the way we do these days and I think that may be a way to deal with finding that balance.

I also think it's interesting to contemplate whether it prevents, and I don't think it does - in Hare-Clark it's interesting to do this, but if it was an upper House seat - the member for Pembroke said -

**Ms O'CONNOR** - There's no problem with that at all.

**Dr BANKS** - There's no problem with that, is there?

**Ms O'CONNOR** - Well, not in the House of Assembly.

**Dr BANKS** - The Greens member for Clark said -

**Ms O'CONNOR** - That's right.

**Dr BANKS** - Obviously it gets a little more complex when there are multiple members from particular parties, but I think it requires more attention to working out how to manage that problem because words can be misleading as well but images, I think, are a more powerful form of misleading conduct and being able to stop it in its tracks I think is a really important protection, because literally, it would take, I suspect, a year to two years to prosecute a breach of section 197 if you could establish to the level required by that provision that it met the test for misleading conduct.

Section 197 is a much harder tool to use to protect the integrity of the electoral process. It's an important tool and I'm not sure it's ever been used. That's another question and I raise it. I think one of the problems we have is an unwillingness of a statutory authority to exert the authority it has in processes -

**Ms O'CONNOR** - Maybe that's an uncertainty, though, about the grounds they're standing on legally, because they've had plenty of opportunities and each time, at some level, for some reason, the DPP has decided the case isn't worth running.

**Dr BANKS** - That is a problem that the state's protections are running scared from a possible threat because of freedom of political communication, but we don't know. If the DPP isn't allowing it to be prosecuted, that's chilling the statutory obligations of the Electoral Commission. We worry about chilling speech, and I worry about chilling speech as much as anybody does, but isn't it equally problematic if an authority is unable to test the scope of their authority and the scope of the law that you as parliamentarians have passed?

**Ms O'CONNOR** - Can I just pick up here? I have to say, Dr Banks, it is surprising to me the number and qualifications of people who are lining up to defend section 196.

Briefly, I've had two interactions with this clause. The first was as a member of Save Ralphs Bay, when we put out a newsletter that told people about the candidates' different positions on the Ralphs Bay development in the 2006 state election. I got a call from the TEC telling me about what the penalty could be and a suggestion we go around and get them out of letterboxes, a chilling effect on a community group that was participating in good faith in a democratic process and informing people about the positions of candidates on a thing that mattered to them.

My second was on a Facebook post where I was talking to our Huon candidate about the Labor candidate's position on pokies. Again, a letter from the TEC telling me to take it down and I said no, because it's not an advertisement. Don't you see that there's a real risk here that most of what people would be wanting to identify a candidate for in relation to a campaign would not be misleading and deceptive, it would be part of the free flow of ideas during an election campaign?

Kevin Bonham's view was is it's not worth it. It's not worth the risks to democracy and free speech to have this set of protections here, which as we know, protect only one class of



people, political candidates, above all else. No-one else in the community has these protections. Do you have observations on that?

**Dr BANKS** - Firstly, yes, I'm aware, having surveyed candidates on their views on things like human rights charters and many other things. I learnt very early in the piece that it's necessary to get consent, and that's a knowledge that I have and not everybody has. It would be useful if the TEC promoted that awareness because, you know, I've never had somebody not consent. Once we've done the survey, they say, 'Yep, happy for you to put that out to whoever you're representing my views to'.

One part of it is, I think, lack of awareness of the provisions, and I get that most organisations are not nerdy lawyers like me. I am a nerdy lawyer, I get that. I do think it's necessary to work out how to find the right balance, but I think the current proposed reform doesn't do anything. I don't see the point of it, because a how-to-vote card is, by its very nature, going to list candidates' names, and that seems to me to be a completely acceptable way to communicate about who the candidates are.

**Ms O'CONNOR** - But it's not at the moment.

**Dr BANKS** - Yes, I know that it's much broader -

**Ms O'CONNOR** - You can't -

**Dr BANKS** - I know you can't now, and it's weird. I mean, that's the one inclusion in that provision that I find really bizarre. You know, what are you going to say - the person with red hair? I don't know how you'd describe the candidates' names.

**Ms O'CONNOR** - But don't you think, in a nutshell, that encapsulates the problem with section 196?

**Dr BANKS** - It encapsulates a problem, yes.

**Ms O'CONNOR** - But what you were saying before about having to ring candidates up to get their permission, that means that you'll only see publications and broadcasts with candidates' names and images if they think you've been nice to them. Do you know what I mean? If someone asked me if they could put my name and image in an ad saying the Greens want to give drugs to children - which they did, by the way, back in 2010 - I'd say, 'No', right? I mean, I wouldn't say no, I'd say, 'Knock yourselves out', and, you know, whatever, but can you see that that is a big problem? That it'll only be the nice stuff that we get to talk about with candidates, so legitimate criticism and engagement on issues just won't be allowed to happen, because the candidate won't give permission?

**Dr BANKS** - I guess this gets down to what it regulates and why it regulates it. I think all of what you've said is a valid concern about how this operates, and I will respond by asking has the TEC ever prosecuted under 197, because that example you just gave is an example of what I would say is potentially misleading conduct.

**Ms O'CONNOR** - To say that the Greens want to give kids drugs?

**Dr BANKS** - Yes. And do you, then, have to argue to the TEC that it should prosecute this misleading thing, at which stage the election's already been decided?

**Ms O'CONNOR** - I mean, that's right.

**Dr BANKS** - This provides a mechanism for limiting and making people stop and think, 'If I put this out there, is it going to fall foul of a protection?', particularly with images. I think images and the power of AI now to create deep-fake materials that suggest that, here's Bec Thomas saying this stuff, when Bec Thomas never said that stuff - and images are really powerful. That's why I say I think more work needs to be done. I don't think I have the answer, but I don't think repealing 196 is the answer. I think -

**Mr BAYLEY** - More working in parallel with truth in advertising laws?

**Dr BANKS** - Yes. But the power of this is that the TEC can act during the campaign. They can just say, 'Do you have consent? If you don't, you might want to take it down'. That is a really powerful tool to protect the electorate. That's who it's protecting. You might think it's protecting you mob but for me, it's actually protecting me and other electors to understand whether or not these candidates did say or do these things, and it protects democracy in doing that.

**Ms O'CONNOR** - Well, I'm not sure that you could argue that it protects democracy to constrain legitimate discussion of individual candidates' policies and positions during a campaign. It is undemocratic. I think it's easy to argue it's undemocratic to restrict conversations about candidates and their positions in publications or broadcasts during a campaign.

**CHAIR** - Just noting, though, that at any stage, for example, the Greens could put a media release out about another candidate naming them and saying what their position was and criticising it, so there are other avenues for genuinely putting news into the public domain -

**Ms O'CONNOR** - But I'm not talking about the Greens, I'm talking about community members or community groups being restricted in what they can say during a campaign.

**CHAIR** - I was just using that as an example.

**Ms JOHNSTON** - Robin, I'm really keen to understand the effectiveness of section 196 at the moment. In 2021 when I stood for election, I was Glenorchy mayor at the time, and a particular individual in the community took affront to what I was talking about with rental policies and put out my image and my name with some information that was incorrect. Whether it was correct or incorrect is neither here or there, they didn't have consent. Clearly, the TEC wrote to that person and said it's a breach of 196, you need to remove that content. What they did instead, though, was take my name away but put 'Glenorchy mayor' and there's only one Glenorchy mayor. It's pretty clear who that was and with the image, they blurred it out. It was the same image as my poster, easily identifiable, not crystal clear, but you could tell who it was.

The protections that are afforded under 196 are only as good as the enforcement of 196 from the Electoral Commission and you've highlighted that, but do you agree that there are so

many easy workarounds in the current provisions that renders that provision useless, or is that too strong a word?

**Dr BANKS** - I wouldn't say useless. This is not my field, but I learned a lot about it during my PhD. The psychology of showing a person's face with a statement, I suspect, is much more influential and much clearer on who you're talking about than something that says the mayor of Glenorchy. I mean, you might think everybody knows who the mayor of Glenorchy is, but a lot of people do not have that level of political knowledge that everybody in this room has.

Hopefully 95 per cent of people know who the Premier of Tasmania is, but I have no doubt that there would be voting adults who don't know. It seems to me that, yes, there are flaws. There's no doubt there are flaws. The question is what's the best solution while still protecting people from being exposed to what is an increasingly big problem with the capacity to generate false material that includes images and people's voices?

**Ms JOHNSTON** - I take your point about images as distinct from names and things like that. We've had lots of examples. I'm thinking of the bald head, for instance, that was used to provide an image of our former premier and the back of a bald head was used as a replacement to get around that. I am really interested to understand and explore a bit more about the mechanism that we have at the moment in terms of how effective it is in terms of providing protections.

**Ms THOMAS** - I think your point about trying to be clear about the problem we're trying to solve here is really important and that's why it's so good that it's been referred to this committee to look further into, because whilst there are quite distinct different views - and we heard that during the recent debate in the upper House - I think, as the Chair has alluded to earlier today, no-one's saying that section 196 is perfect and it should be kept in its current form and we now have an opportunity to explore that further. There is reference in 196 about influencing the recording of a vote, is that the wording?

**CHAIR** - That's 197.

**Ms THOMAS** - That is what you were referring to before. Does part of defining the problem need to give consideration to the intent people have? Cassy was talking before about being able to legitimately criticise other candidates. I have my own personal views on that, but in using people's names and images, is part of what we need to give consideration to the reason for doing that? Is it to inform voters? Is it to defeat other candidates? Is it to harm other candidates? Is it to help other candidates? In that case, you can easily get their permission, probably. Overall, the intent is trying to influence how people vote. We can be influencing people to vote for us or we can be influencing people not to vote for others. That doesn't mean they're necessarily going to vote for you, they're just not going to vote for that person. It is quite a complex problem that we have to consider through the work for this committee and I'm interested in your views on what other sorts of things we need to consider in defining the problem.

**Dr BANKS** - I think I have an answer to that, but part of the problem with 197 is that you have to establish its potential impact, whereas this is, simply, was there consent? It's much simpler, it's a yes or no answer, whereas often with the provisions, and 197 is an example, you really have to get into 'was this capable of' and it's a defamation question. It's what happens in

defamation law. What was the intended message? What would a member of the general public understand by what was communicated by this? I'm using defamation law as the sort of analogy and if that was what a member of the general public would have understood, was that misleading? Could it have influenced their vote?

It's a lot more complex than what 196 is capable of doing and maybe 196 is capable of doing more than it should be able to do. I think that's a valid question to ask. Does it do too much work, but the fact that it can be acted on without a lengthy, evidential interrogation beyond 'was there consent or not' really undermines 197's effectiveness as a mechanism to protect democracy. That is what we're talking about here, something that can be enacted on at the time that can perhaps help the electoral process and that will make people think, particularly political parties. This is the thing I find really striking about the lack of prosecutions, is that, having done a little bit of a survey of what's been wrapped over the knuckles in the last few elections, major political parties do it every time. They can't possibly not know.

**Ms O'CONNOR** - When you say do it, do what? What are you saying?

**Dr. BANKS** - They fall foul of section 196. They use images and names despite knowing, so they're doing it knowingly. Whereas what happened with the Juice Media video, they clearly didn't know. Ralphs Bay clearly didn't know. It's a very different offence if you knowingly do something than if you inadvertently do something.

**Ms O'CONNOR** - Can I check you on that? With the Facebook post that I refused to take down and then the TEC back down. That was captured within publication and captured as an advertisement. Don't you think there is a risk here? The Juice Media is a really good example of it, where the TEC on the basis of a single complaint at times, might decide to examine and apply section 196 to its broadest interpretation. What you're getting here is a chilling effect on the free flow of speech in a democracy, because the TEC goes, 'that's a clear breach and that's a breach and that's a breach'.

**Dr. BANKS** - They never prosecute.

**Ms O'CONNOR** - Yes, but there's a bigger issue potentially here, which is that the TEC, by reflexively feeling it has to take an action under section 196 when it receives a complaint, because it's reacting in that way, it is having a chilling effect on discourse.

**Dr. BANKS** - Is it, is it really?

**Ms O'CONNOR** - I think it really is?

**Dr. BANKS** - It could, I think it could.

**Ms O'CONNOR** - There might have been other politicians who when the TEC said, 'oh, that Facebook conversation you're having about a candidate falls foul of section 196', and went, 'Oh', and that means that people who might have understood more about the Labor candidates' position, they didn't have that opportunity. Don't you think it is problematic here?

**Dr. BANKS** - I think it has the potential.

**Ms O'CONNOR** - For a human rights champion.

**Dr. BANKS** - Yes, I'm a human rights champion and free speech is a fundamentally vital form but misleading speech is not free speech. I understand that you're trying to find a protection for, and we should all be trying to find a protection for, robust political discourse. Absolutely, I don't have any problem with that. I've had people say to me discrimination law chills speech. Really? What kind of speech is it that it chills?

I can tell you what sort of speech it is might make people think twice before they say something really appalling, racist, sexist, ableist or any of those other things. Am I concerned about that restriction on free speech? No, not particularly, because the purpose of the freedom of expression under international law is not to allow you to infringe other people's rights. It's to allow you to engage in discourse that is respectful of other people's rights.

**Ms O'CONNOR** - Section 196 doesn't allow that.

**Dr BANKS** - That may be a problem with 196. Do you throw out the whole of the potential of 196, which is much greater potential than 197, to provide effective immediate protections? I agree, 196 isn't the perfect tool, but I don't think getting rid of it or limiting it to how-to-vote cards does anything useful, and we take away at a time when the whole of Australia is concerned about truth in political discourse, to take away something that might give us some protection, a mechanism to protect.

You talk about a chilling effect, absolutely it could have, it doesn't have -

**Ms O'CONNOR** - Well, how -

**Dr BANKS** - Sorry, can I finish? It is unlikely to, given it doesn't get prosecuted. Anybody who's au fait with the way the system works in Tasmania will go, 'I can get away with this. All I'm going to get is a wrap over the knuckles', that's not effective either. Perhaps I'd be more concerned if I saw a lot of sort of aggressive prosecution of the provision, but I don't. As I say, repeatedly in elections, the major parties do things that fall foul really clearly and not in a 'we just made a mistake' sort of way, it seems to me. They get the same wrap over knuckles that Juice Media got.

**Ms O'CONNOR** - But why should Juice Media have had any wrap, given that it was clearly satire and not -

**Dr BANKS** - Well, that's a question for whether there should be mechanisms to say satire, et cetera like we see in the *Anti Discrimination Act*, the defences that protect free speech. There are defences. It doesn't say you can say whatever you like about anybody you like, whenever you like, under discrimination law. It says there are mechanisms, art, public, media reporting of things that have been said and done, various other mechanisms that attempt to find the balance. Getting rid of it entirely, I don't think goes there.

**Ms JOHNSTON** - Further to that point, is the issue more about what's defined in terms of material that 196 covers so that there's a difference between political discourse and commentary on Facebook where you're talking about things that are almost a media release newsworthy kind of capacity compared to an advertisement, a print advertisement or a clear election ad or something like that? Is there a difference in the material that 196 is covering that

can perhaps be made so that the free flowing of debate and airing of views can occur but an advertisement?

We go back to the Juice Media, that's where TEC has an incredibly broad definition of what an advertisement is.

**Ms WEBB** - To be clear here now, because media releases aren't captured by 196 and the TEC identified for us yesterday, in case you didn't see it, that their legal advice had that broader interpretation of advertisement because they took into account a definition in the associated *Electoral Act*, which is about electoral matter being something designed to influence a vote. If something is presenting information in a way that's designed to influence a vote, then it gets captured. Just to be clear.

**Ms JOHNSTON** - Yes. I'm curious if the posts that Cassy had talked about the video, if you had put that in written form and published it on your website as a media release, it's fine. It's around the material or the formatted material that 196 is being captured and perhaps there's work to be done to clarify that. I take your point about how-to-vote cards. It's probably where you are going to name people.

**Dr BANKS** - It's hard to create a how-to-vote card that doesn't use names.

**Ms JOHNSTON** - The protection can be extended to certain forms of material, but not to others, to free political discourse.

**Dr BANKS** - As I say, I believe it's worth interrogating the question of the use of images compared to the use of names and words because I do think images are very powerful and they're getting more powerful, particularly your 15-second grab. There's a lot of evidence that people spend a lot less time reading and a lot more time looking.

**Ms JOHNSTON** - And low literacy levels and all those things.

**Dr BANKS** - Yes, TikTok, it's not two minutes of text, it's 2 minutes of dancing or whatever else you want to do. There's a question that's worth considering and to get expert advice about how do images have a different influence on people's behaviours?

It would need careful crafting because, of course, keeping up with technology, so you wouldn't talk about particular platforms, but you might talk about written versus visual media. I suspect, and this is my suspicion, more than anything else, I suspect they have a very different influence on people's thinking. I think that matters, because I think it is important to be able to say, as you've suggested, in a discussion between you and a local candidate, 'What do you say about X's position on this, which I understand is such-and-such?' That's an important part of political discourse, there's no doubt about that in my mind.

**Ms O'CONNOR** - We thought so.

**Dr BANKS** - Yes. The question is, how might you tailor 196, or something new? You might get rid of 196 in its entirety but replace it - not just get rid of it - replace it with something that really does get to truth in political speech. Obviously, this has been something that's been considered in the federal parliament, at least by the crossbenchers, as a really important discussion for the future. The Australia Institute's work is clearly focused on it as well. I don't

think we should ignore that. I think we should look at how 196 could be greatly improved and fix the problems that have been identified with it, rather than get rid of what may be almost the only effective mechanism we have in Tasmania. Even at the level it's not prosecuted, at least it says, 'think before you act', and that's not a bad mechanism. I'm pretty sure my mum and dad said it to me a thousand times as a child - 'Did you really need to say that?'. To me, getting rid of it is getting rid of something that has real potential to respond to the future of technology, despite the fact it comes from 1911 or whenever it was.

What an extraordinary piece of - I tried to understand what its purpose was, so I tried to find second readings from way back then, couldn't find anything. I'm fascinated that it's there, because I'm aware that it's unique. I'd have to say, I have a lot of respect for Andrew Inglis Clark and his concerns about representative democracy. If he had anything to do with the *Electoral Act* when it was originally enacted - he was central to the Hare-Clark system - I'd be interested to understand what his thinking was, because I think he was a smart, forward-thinking politician and lawyer. I do think it's worth understanding what it is was originally intended. Is that intention still valid? What can it do now? What shouldn't it do now?

Therefore, what reforms should we make to it that do something more than limit it to the only thing that, it seems to me, you should be allowed to name candidates in, without any question. I think you should be able to name candidates in other circumstances, so I do think it's not perfectly tailored in its present form.

**Mr BAYLEY** - Sorry, a quick follow-on. What about, in terms of your argument, should it extend to parties? We had a situation in the last election where the Liberals were running ads around crashing the economy and green traffic lights and that sort of stuff, which was obviously completely dubious. Are you arguing, or would you argue, in the same vein, that you are, that it should actually be broadened to capture parties? Just to throw something into the mix there.

**Dr BANKS** - I'm probably not arguing that, because I think the influence of images is incredibly powerful on our subconscious and conscious brains. I would love for this committee, or the people who develop the right protections, to actually pay attention to what people know about the psychology of decision-making in this kind of domain, because I think it really matters. I think people are heavily influenced by what they see, visually, much more than they are by 'the Greens did' or 'the Labor Party did'. I think the name issue is less of a problem than the images issue.

**Mr BAYLEY** - I guess I was thinking more logos in that context, probably, that's why I mentioned parties.

**Dr BANKS** - Yes, but you don't vote on logos. You vote on names, don't you?

**Mr BAYLEY** - There are attack ads around logos. They do attack ads with the visuals for a reason.

**CHAIR** - There are particular kinds of psychological impacts that can be had, though. Again, it came up in our upper House recent debate on this and just for clarity, the bill to adjust 196 back to that more constrained form has been referred to this committee for inquiry. That hasn't officially started. Any evidence we take in this context under this inquiry can be brought across to that inquiry. So, all of this is useful for that further examination.

In the debate in the upper House, it was pointed out, or raised as an issue, that there are these particular vulnerabilities here in terms of gender, because of the impact on female candidates running and the use of images, especially cooked-up images that might be incredibly disrespectful and inappropriate and sexualised, for example, and the impact that has. If that goes into the public domain - an image where somebody's face and head has been put on another person's body and presented in that way - that immediately undermines the credibility and the professionalism and the perception of that candidate. Even if the person viewing it can readily know 'that's probably not real', it already has done work, which is, I think what you're pointing to.

**Dr BANKS** - Yes. Sexist, racist, other tropes being triggered by images - I think, we need to pay attention to that stuff. It's what, in some places, would be referred to as casual racism or sexism. It's like, 'Yes, we won't say anything, we won't do anything overtly, but we'll try and trigger, in your mind, an association'. People talk about unconscious bias. Unconscious bias - the term of art is 'implicit associations'. What is the association that is triggered in your brain when you see a person of colour or a woman? It's actually that idea that you can trigger negative and positive associations through visuals and through words, but particularly through visuals, in this case, I think. Understanding that - and I hadn't thought about that particularly, the potential to use really sexist images that then completely undermine the standing of a candidate in an electoral cycle.

I think that matters. I think it really matters. I guess we're doing this on a day that's probably of more significance globally.

**Ms O'CONNOR** - It's hard to concentrate, isn't it? It's a bit hard to concentrate.

**Dr BANKS** - Yes. I mean, in America, their free speech protections are so extreme that you could get away with saying and doing anything, almost, in the name of free speech. I think we, in Australia, understand that that's not the nature of free speech. We need to understand that speech can do harm - and speech includes visual expressions - can do a lot of harm, and we need to find the right balance.

We do have - the High Court has - mechanisms for determining whether something is proportionate and appropriate. It may breach the free speech protections, but is it a permissible breach? We don't know the answer to that with 196, because it's never been tested. That's unfortunate, because I think it would be really useful to know how the High Court would come down on this, because I think it is a nuanced situation. I would never suggest anything other than that - I think it's a very nuanced situation.

**Ms O'CONNOR** - Can I ask, just off the back of that question - so 196 now, within a campaign period, can prevent an obscene, cooked-up image of a candidate potentially from being published or broadcast, but for the other 11 months of the year, every member of parliament can be subject to that already. Is 196 the mechanism to fix what is a broader problem here? One of Kevin Bonham's suggestions was quite good, and I don't want to verbal him, but to set up or establish a different regulatory or legislative framework that can deal with deep fakes and AI as a separate and distinct broader question. Section 196 is quite narrow.

**Dr BANKS** - Look, if there's a better mechanism, let's look for that, but let's not get rid of what we have in the meantime. Let's do the reform when we're ready to do the reform.



## PUBLIC

I think it makes a difference that it happens during campaigns. You're trying to win my vote - that's a point in time. It really matters during that campaign what I'm exposed to. I could switch off entirely for the next three years after that - I don't, but many people do, and I get that. Who needs to play politics every day?

I think it really matters, because that vote is our way of expressing our view about who should govern us, represent us, represent our interests, for the coming period. We only get to do that once every number of years. Yes, over the period in between there's stuff that might lodge in our brains. I'm trying to remember who the academics are - there is stuff about what you remember when you're making decisions.

**Ms O'CONNOR** - You remember how someone made you feel.

**Dr BANKS** - No, I'm not talking about that. I mean, what influences you in terms of decision making. Certainly something temporarily more current is going to be more influential. I'm really trying to remember the research. I've read it at great lengths, because it matters in discrimination law as well about how we regulate things.

**CHAIR** - There might be more opportunities to come back to us, because we will be looking at the bill that's currently there. We'll be contemplating this further, so there'll be opportunities for that down the track.

We've come to the end of our time in the hearing today. It's been an incredibly valuable conversation and I thank you for it. As you can tell, we as members are all grappling with this and have different views and experiences of it and the complexity of it. I think there is broad agreement that something needs to be done with 196. Does it need to be replaced with other things at the same time, or reconsidered in other ways, is obviously key there. Thank you very much.

I'm just going to, as a formality, say that as I advise you at the commencement of your evidence, what you have said to us here today is protected by parliamentary privilege. Once you leave the table, you need to be aware that privilege does not attach to comments you may make to anyone, including the media, even if you are just repeating what you said to us. Do you understand that?

**Dr BANKS** - I do understand that.

**CHAIR** - Thank you very much, and we've really appreciated the time and effort put into your submission and your hearing.

**THE WITNESS WITHDREW.**

**The committee suspended at 1 p.m**

## PUBLIC

**The committee resumed at 2.30 p.m.**

**CHAIR** - Thank you. Welcome Jarryd. You're here from the Tasmanian Labor Party and we appreciate your time. Welcome to the Joint Standing Committee on Electoral Matters and our inquiry into the 2024 General House of Assembly elections and the periodic Legislative Council elections 2024.

Let me introduce the members of the committee who are here today at the hearing. We've got Simon Wood, Liberal member for Bass online up on the screen, Cassy O'Connor, Greens member for Hobart, Kristie Johnston, independent member for Clark, Vica Bayley, Greens member for Clark, Bec Thomas, independent member for Elwick, and I'm Meg Webb, independent member for Nelson.

We thank you very much for your time and for the submission made. I'm going to begin with some formalities. Before you begin giving your evidence, I would like to ask whether you've received and read the guide sent to you by the Committee Secretary?

**Mr MOORE** - Yes.

**CHAIR** - Great. I'd like to reiterate some of the important aspects of that document here on the record. This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom and without fear of being sued or questioned in any court or place other than out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This is a public hearing. Members of the public and journalists may be present and this means your evidence may be reported.

It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand?

**Mr MOORE** - I do.

**CHAIR** - Excellent.

**Mr JARRYD MOORE**, TASMANIAN LABOR, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED

**CHAIR** - Thank you very much, Mr. Moore. Typically, people may choose to make some opening remarks to us as part of their hearing and then we would move to some questions from committee members. If that suits you, would you like to make some opening remarks?

**Mr MOORE** - Yes. I thank the committee for inviting me, for having me. I've gone through this process in multiple states now and I always actually find it very useful. I think these committees have driven quite a lot of reform across the country, particularly over the last sort of 10 or 15 years in electoral reform. I'm not sure if everyone in the Committee has had the opportunity to read the submission we made.

I hope everyone's had the opportunity to read the submission that we made to the committee. We've largely focused on a number of issues with a sort of broad theme around

modernising the administration of elections and taking some of the learnings that we see in other states and looking at how we could introduce some of those into Tasmania.

I might throw to questions.

**CHAIR** - I am interested - you've highlighted the ACT as a useful comparison point for our jurisdiction in terms of size and the Hare-Clark similarity in that sense. You're pointing to two elements there, electronic voting and electronic counting. I'd be interested to hear a little bit more about an explanation as to the benefits that you would see on each of those. They're two quite distinct things. In fact, you could go down the path of both of them or just one of them, one or the other of them.

Would you like to speak a bit further with a bit more detail than what's in the submission about what you see would be beneficial for our state in considering those?

**Mr MOORE** - Yes. I've come from the ACT before, so I've worked in that electoral system for, I want to say, almost 10 years. It was the first state in the country to introduce any kind of electronic voting. It's had that in place now since 2001. It's gone through different iterations, but a version of that since 2001. It's had electronic counting since 2008, so very well-established systems. The first election or two, I believe there were maybe some issues that they've worked through, but it's a very stable, reliable process and systems in place now.

The electronic voting is the process of actually casting votes on a computer. You go to a polling place and there is a touch screen computer and you cast a ballot on the screen. The benefit of that is the ability to be able to quickly process those votes after the election, particularly, with the large increase that we've seen in early voting across the last decade or so. The electronic voting means that, come the close of polls, we can very quickly press a button and get the results of a very large number of votes.

That is efficient in terms of the cost of doing that. Obviously, you're not having to account for all the extra the work required to manually count votes. But there are also some benefits in that of lowering the chance of people accidentally and informally voting and things like that, because, obviously, on a computer screen, there's more limited ways that you can sort of mess up a ballot than with a pen and paper. The benefit of that doesn't just extend to the efficiencies in counting, it extends to the actual democratic process itself.

**CHAIR** - Is there data on the fact that there would be lower, from what you've just said and described, informal vote rates for jurisdictions that have their electronic voting compared to say, our jurisdiction which doesn't?

**Mr MOORE** - I believe there is. It's been some time since I have looked at that for the ACT, but I believe that there are a number of countries around the world that also have that same experience.

**CHAIR** - Is it NSW though, as a jurisdiction, that's had some issues with electronic voting? That they've had to roll back some of their electronic voting capacity? I think it came up with our hearing yesterday. Or was that only in relation to assisted electronic voting for people with disabilities? I can't recall now. Have there been any issues in terms of incorporating electronic voting in any other jurisdictions that you're aware of that we would look to

understand if we were considering it for this jurisdiction? Things to be aware of or to be looking out for.

**Mr MOORE** - Not that I'm aware of. Not in Australia at least.

**Ms JOHNSTON** - Just on the electronic voting. Excuse my ignorance, I'm not quite sure how they physically work. When you go to cast your vote electronically, I think you said it was on a computer screen or a touch screen, with the informal votes, is it possible to vote deliberately informal with that system? Is there a warning that comes up? For instance, if you go 1 through to 7, you've accidentally put 6 twice in. Are there any warning systems if your vote may not be valid?

**Mr MOORE** - Don't quote me on this because I'm not 100 per cent across the sort of minute details. My understanding is that yes, that you as a voter still are able to cast an informal vote. But I believe the system has a, trying to think of the word, almost like a confirmation at the end. I'm not sure if it will call it informal or what it might say, but it's certainly reiterates to the inputs that you put into the system before confirming. I understand that it's designed in such a way that you either can't or it's very difficult to sort of double up on numbers, or things like that.

**CHAIR** - In terms of the electronic counting, essentially, it's data entry from paper ballots into an electronic system that then does the counting once the data has been entered. I think some other people we've heard from through this process have suggested might be a good thing to consider for our state. In fact, similar to what we may already have in place for local government elections, I believe here. It would be extending a similar concept into our state elections. Is that something that you see as useful for efficiency purposes or are there democratic benefits that you see from that being implemented?

**Mr MOORE** - Definitely both. The efficiency benefit from this is pretty significant. The amount of time it takes to count a vote significantly reduced. The results for the [inaudible] I believe are achieved in almost half the time that takes. It's worth noting on that, that it's half the time but that process is not only just counting the votes, it's also recording a whole bunch of other data as well. It's gaining more than just a time efficiency.

The benefits to that are sort of couple of folds. You have the faster count. After an election, particularly in Hare-Clarke and, I think, particularly now, with the election of seven members per seat, there are more opportunities in each count for them to be very close. It's not unusual in Hare-Clarke. When you are looking at the results of an election and parties and independents are trying to form government, the process of doing that, it's not unforeseeable that that could drag out significantly if there are really, really close votes and if we're talking about votes that are down to sort of double digits margins in them. You could be looking at recounts that could extend on where you might not know the outcome of a government for an unacceptably sort of long period of time in modern context. This process really narrows that down.

The second thing that it does is it provides you with all of the data on the ballot papers. It's not just counting the preferences and sort of moving them pile to pile is as you exclude people. Every preference gets recorded. That, in itself, has two really valuable uses. The first is that, during the count, you're able to take all of those votes that are counted scanned in and run what that group of votes would look like. In the ACT, for example, at the end of each day

of scanning, they run what's called an interim distribution and that's published along with the numbers and you're easily able to get a sense of where preferences are going and sort of what the likely outcome will be -

**CHAIR** - What direction it's heading in.

**Mr MOORE** - Yes, exactly. That often provides a very clear picture of the vast majority of seats well before a sort of manual preference distribution would start to occur and because of the electronic voting, that happened on the election night itself. I think in the most recent election there was, I think it was 40 per cent nearly or maybe slightly above 40 per cent in the ACT had cast an early vote. Vast majority of those are electronic and that interim distribution was able to be published on the night of the election, making the process of, you know, negotiating the formation of the government very quick and easy.

The second thing it does is it provides all that data publicly, so any member of the public is able to download the voter data file and that not only increases the sort of transparency of that process, but it means that in parliaments where there are countbacks, which is highly regular in Hare-Clark contests, it gives certainty to the members of that parliament that if they're considering resigning for whatever reason, around who their countback's going to be.

I've certainly known MPs before who have hesitated and not decided to risk a countback because they didn't know who their countback might be. That's a problem because I think that encourages MPs who either no longer want to be there or aren't able to be there because of circumstances beyond their control, to stay and that can lead to them not being able to serve their constituency in the best way.

It can also give uncertainty, particularly to governments, around who it is that's going to replace someone in the parliament. It's less of a problem if we're talking about members of a particular party of the government, but say an independent member resigns, obviously there's no sort of ticket for a thing to flow down and -

**CHAIR** - Who knows where it may end up?

**Mr MOORE** - Exactly, yeah. I think when we have the ability to give that stability to a parliament and a state, that's a great benefit we shouldn't overlook.

**Ms O'CONNOR** - Thank you, Jarryd, for your submission and presentation. I'm still struggling to understand. The first of these points in your submission are more about some of the machinery of an election and polling day and less about participation, but the last two, vote-saving provisions and expenditure caps, do. In terms of electronic voting, voting more than anything else, what's the benefit to the voter in that system? It might be one thing for us political nerds to want to know on election night what the result might be because we still have to wait till postals come in, but what's the benefit to the voters in an electronic system? It's not about certainty or anything for them, is it?

**Mr MOORE** - I think when it comes to electronic voting, the ability to be able to present someone with an interactive voting experience gives greater opportunity to decrease the accidental informal rate, which while that might not be an experience that gives people an increased feeling of participation, I think the actual act of incorporating more formal votes into the system is one of enfranchisement. I think it also opens up the ability to be able to explore

things like providing a greater number of instructions in different languages and things that are more difficult in a printed context.

**Mr BAYLEY** - Obviously you've campaigned in Tasmania and I think we heard evidence from someone else, it might have been Dr Bonham, around the geographical challenges in Tasmania compared to the ACT and also some of the literacy, particularly digital literacy. Do you see that posing significant prohibitive challenges here in Tasmania compared to the ACT, which is smaller and more highly educated and arguably more engaged politically than the Tasmanian population? Does that pose some challenges that you think could be prohibitive or -

**Mr MOORE** - No. I want to make a really clear distinction between the kind of electronic voting that some states have played with, like New South Wales with iVote, an online system where people have to log in -

**Mr BAYLEY** - Do it at home, yes.

**Mr MOORE** - That's a much more complicated process. Having done the electronic voting myself previously, it is a far more intuitive system. It's very simple to use, very clear instructions on the screen, if not more simple than -

**Mr BAYLEY** - Than a ballot.

**Mr MOORE** - Yes, because you can guide people through it in a way that you can't on a piece of paper, where you have to trust that they're going to read everything in the right order. I think, if anything, that is able to overcome some of those problems.

**Mr BAYLEY** - And what about the geographical distribution? We've got so many regional areas compared to the ACT. Is it just a bad financial investment and just roll it out?

**Mr MOORE** - The way the ACT deals with that is that electronic voting isn't at every booth.

**Mr BAYLEY** - It's not?

**Mr MOORE** - It is primarily at pre-polling locations - in Tasmania a large percentage of people pre-poll - and then the rest of those are dealt with through the electronic counting process with the scanning of the physical ballot papers.

**Mr BAYLEY** - Okay, great. Thanks.

**Ms THOMAS** - Further to Kristie's question about informal voting, do you know if there's any data to suggest that informal votes went down since electronic voting was introduced?

**Mr MOORE** - That is my understanding, but like I said, it's been quite a while since I've looked at that data and it was introduced some time ago in the ACT. My understanding from overseas jurisdictions is that the amount that it decreases it varies, because there's a whole bunch of factors. How complicated is the electoral system? What is the way that the electronic voting is actually implemented? You could implement electronic voting in a way where it might

not give you the ability to put a number twice, but it might give you the ability to submit a blank ballot still. Other systems could be designed in a way where you can actually do whatever you like on that screen.

I think we'd need to look at what it was that you actually wanted to put in there, the barriers and thresholds. You couldn't just use the existing legislation and try to sort of put it on top of an electronic process. You'd really want to have a specific part of legislation written that deals with how that's implemented.

**Ms THOMAS** - Yes. Logically, you'd think the number of people who unintentionally submitted an informal vote would go down, but I take your point that it depends on how complex the process is.

**CHAIR** - I thought it was a very clear point you made about the need for an online portal for candidate nominations; it just seems a really practical suggestion. From what I gather from the comments in the submission, it looks like Tasmania might be well behind. Are we the only jurisdiction who doesn't have such a facility, where candidates can nominate online and do their payments online, whereas we have to front up and put a form in and pay by bank cheque or cash? Are you aware of any other jurisdiction that still has that as their arrangement?

**Mr MOORE** - I am not across every jurisdiction in terms of that process. I believe we are one of the last, at least, that still requires payment by cash or bank cheque, which generally requires people to go to a physical location as opposed to posting that amount of cash in the mail. But I've certainly seen the other end of the scale. New South Wales, to my understanding, has quite a complex nomination process, so it has quite a good portal to be able to deal with that process. I think you should be able to have a place where people can put in their nomination, be able to know that it's been put in and accepted, particularly in a state like Tasmania that has geographic barriers. Candidates shouldn't have to drive large lengths of time to submit a nomination in person, when in 2024 I think we can probably do those things online now. Yes, that would be a reasonably simple fix to introduce.

**CHAIR** - Thank you. On that then, obviously, we'll be able to ask questions of the electoral commission and find out from their side of it what that could look like or what the barriers might be or why it hasn't been done, but is it your understanding that Tasmanian Labor, as a major party, have they lobbied for this to occur previously? Have you been made aware of any reason why we don't have this in place already?

**Mr MOORE** - I'm not across any previous lobbying on this issue, one way or the other. It is something that I have included in the submission, simply because I have seen that process occurring in a number of other states and seeing the progress made, particularly sort of over the last 10 years. There have been large changes in this in most states, while Tasmania is a bit behind the 8-ball on this one, it's not a change that other states had done 20 years ago, they're relatively new, but relatively simple.

**Ms O'CONNOR** - Extending beyond your submission to some of those more democracy-fortifying reforms that have been raised in submissions and by people who've given evidence. I do note that Tasmanian Labor, on some necessary, substantial reforms, is supportive. In terms of the party's position on lowering the donations disclosure cap from \$5000 to \$1000, in line with the Senate Inquiry and other best practise around the country, is that

something that Tasmanian Labor could be prepared to support in terms of reform, so that the next election there's much more transparency around the flow of money?

**Mr MOORE** - Tasmanian Labor has had a history of supporting the lowering of the threshold. The questions around that for us, generally coming into the realm of how that is actually implemented in practice.

I appeared before an inquiry a couple of months ago now, I believe, we discussed the details and the practicalities of that in great detail. I refer the committee to the submission we made on that. We have made some pretty extensive commentary on that process.

**Ms O'CONNOR** - That was a different committee though, for a different bill and there will be another bill before the House. The Tasmanian Electoral Commission has indicated that it would be supportive, in fact, thinks a review of the *Electoral Act* is a good idea. On behalf of the party, do you have any thoughts on a broader examination of that act to modernise it because it's 20 years old?

**Mr MOORE** - That is not something that has been put to me before. We've been looking at individual aspects of the act as they've come into the public discussion and a number of those have come up in that previous committee with that bill in our submission here. The changes made in the legislation that was passed at the end of last year, they are pretty significant reforms to that bill. I don't have any particular view one way or the other on whether there should be a sort of wholesale review of the act, but I think the party would be willing to listen to the arguments and be persuaded either way.

**Ms O'CONNOR** - What about real time disclosure or something close to it? It was the Palaszczuk government in Queensland that introduced, I believe it was the nation's first substantive real-time disclosure framework. Is that something, at a state level, Labor is open to, from what we understand that is the case?

**Mr MOORE** - The devil's in the details in this one and it's what exactly we mean by real-time disclosure. There are many different variations of it.

**Ms O'CONNOR** - We mean 30 days in any ordinary year, a week during the month of the campaign and within 24 hours in the last week of the campaign?

**Mr MOORE** - Generally, 30-day disclosure is achievable from an administrative perspective. Seven days during a campaign, while difficult, is probably still achievable, 24 hours does become far more complex and difficult -

**Ms O'CONNOR** - Why is that?

**Mr MOORE** -The reasons around that are multifold. When donations are taken a multitude of different ways - it could be someone makes an online donation, someone might attend an event, they might buy a raffle ticket, whatever it might be - sometimes those payments are electronic, sometimes those payments might be - you've gone to a local fundraiser at a candidate's house, you've bought a few raffle tickets and paid money for it. Accounting for that becomes quite a burdensome administrative process, particularly in the last couple of days of an election. To be able to not only record that, for example, we're talking about cash for a raffle, deposit that money and then reconcile that at the party's end, deal with any



discrepancies, let's say someone provides their name, but they provide a nickname and you try to work out if this person is someone who's given previously because the donations are cumulative. It's not just taking the information and sending it through, it's a process of matching it all up.

It's quite a complex administrative process that I believe in the last few days of an election could provide a negative impact on the ability of candidates to do their primary role, going out there, talking to the community and campaigning.

**Ms O'CONNOR** - That's a fair question. I will say you'd have to have a really great raffle prize to be buying tickets that were worth \$5000 at the moment or \$1000 if this change goes through. It's for bigger donations.

**Mr MOORE** - I believe I mentioned this in the other committee was, if we're talking about a disclosure for larger amounts of individual transactions in that last period, that's a very different question to whether or not we are working in that cumulative system of having to match everything up regardless of the value. Under the current framework, it will be \$5000, but if it was changed to \$1000, same thing, you're adding all the donations up over a period of time. If we're just looking at individual transactions in that final period, that's administratively, I couldn't see a complexity with that.

**Mr BAYLEY** - We're looking into the conduct of the election and one submission goes to Section 177 of the act, which is signs within 100 meters of polling places, and it raises a concern and frustration with a lack of action from the electoral commission about dealing with Labor Party signs erected seemingly overnight at polling places. Literally at polling places within schools, which the submission claims, and I would tend to agree at face value, breaches the letter of the law and certainly the spirit of the law.

Were they rogue campaign elements within the Labor Party that did that, or was that a deliberate strategy of the Labor Party to erect those signs? I just invite you to articulate your thinking behind that in the context of section 177?

**Mr MOORE** - The party made a decision to erect signs, it was done on the basis of the advice provided by the electoral commission in its own guide.

**Mr BAYLEY** - Which is, if you want to paraphrase?

**Mr MOORE** - Essentially that provision in the legislation only applied to the erection of signs on the day of the election?

**Mr BAYLEY** - So you would say that if you erected them at 11.59 p.m. on Friday evening, that's compliant with the law?

**Mr MOORE** - That is the advice that was provided by the commission in its guide.

**Mr BAYLEY** - Would you say that's compliant with the spirit of that section of the act?

**Mr MOORE** - I've not read the individual part of that act recently, but whether or not it's in the spirit, we'd have to ask the original people that wrote the legislation.

**Mr BAYLEY** - Did you ask them for an interpretation of that or did you just read their guide and that's the interpretation you have come up with?

**Mr MOORE** - No, we read their guide and it was very clear and succinct, and we understand that the interpretation of that had changed. Our understanding is that if the previous parliament had wanted to deal with that issue, it could have. The legal advice had been received by the Electoral Commission and if parliament had wanted to change that, I'm not sure why it didn't act on that.

**CHAIR** - I was just going to clarify. I believe signs were put up on school property that was hosting polling sites, which is not normally somewhere you would be able to erect political signs, regardless of whether it was polling day or not. Was permission sought from the schools themselves to put up signage on school property that was hosting polling sites?

**Mr MOORE** - My understanding from talking to other states is that in every other jurisdiction in the country, and including at federal elections here, signage is put up at the entry to the grounds of polling places, and that's a normal part of almost every election in the country.

**CHAIR** - But not under Tasmanian law. That's generally not the intention.

**Mr MOORE** - No, my understanding is that the law doesn't deal with the regulation of that, except for signs erected on the day of polling.

**CHAIR** - It's a fairly slippery argument, isn't it, Mr Moore?

**Mr MOORE** - No -

**CHAIR** - A fairly slippery argument. You're going to slip in there at 11.30 p.m. the night before; pop the signs up on the polling site, which is public land, school land, because technically it doesn't say you can't, even though obviously the intent of 177 is that signs aren't allowed at polling places or within 100 metres of them for polling day purposes or for promoting during polling day. Would you accept that that was the intent of 177?

**Mr MOORE** - I don't know what the intent of the legislation was. I certainly wasn't around when it was written, but the legal advice given to the TEC is what it is and if the parliament wants to change that, it should.

**CHAIR** - Is the fact that the TEC took your signs down in many instances on polling day because they believed it was breaching the law, an indication to you that that was actually a misinterpretation on your part of the guidelines?

**Mr MOORE** - No, we actually have grave concerns about the fact that the commission was acting outside the powers given to it under the act.

**CHAIR** - What steps are you taking if you have those concerns?

**Mr MOORE** - We've not decided to take any steps at this stage.

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**CHAIR** - Do you accept that anything that a party does under the cover of darkness the night before an election is probably an indication that it's against the spirit of the law if you're slipping past it under the cover of darkness?

**Mr MOORE** - No, I think that is normal practice in most states across the country. In the evening before an election, volunteers go out and put up signs.

**Mr BAYLEY** - Where it's a permitted activity. Would you do it again, on reflection? Would the Labor Party make this decision again?

**Mr MOORE** - We'll comply with the act.

**Ms JOHNSTON** - I'm just looking at the candidates' handbook from the 2024 election and it quite clearly says on page 28 regarding the placement of posters and signs that electoral posters must be authorised, as mentioned previously. It says permission to display posters on private property must always be obtained from the owner of the land concerned and then it goes on to talk about public land and planning scheme provisions. Do you accept that by placing them on school properties, on road reserves, if it's on the other side of the fence, for instance, would be in contravention of planning provisions, or if you haven't received permission from property owners to do that?

**Mr MOORE** - We're talking to the private property, obviously. My understanding is that in every state the erection of signs around polling places is not covered in any legislation; it's a convention.

**Ms O'CONNOR** - Did you say the erection of signs around polling places?

**Mr MOORE** - Yes, sorry - it's not guaranteed. There are some states in which there are particular provisions preventing it, like distance things and stuff like that, but certainly from my read, there's no specific legislation that sort of says you can place it on the fence of these things, not on this. No legislation gets into that sort of level of detail, so we took the approach that this was a normal convention of Australian elections and acted accordingly.

**Mr BAYLEY** - Have you done it before in a Tasmanian election context?

**Mr MOORE** - I couldn't answer that question; I've not been around for every Tasmanian election.

**Ms JOHNSTON** - I'm just curious, because your evidence before was that you considered the candidates' handbook in terms of deciding whether or not you could put it on a property before midnight before polling day, but you haven't - if I understand correctly - considered the candidates' handbook in regard to the placement of posters and signs and followed what's quite explicit in the handbook about seeking permission on the placement of signs on public facilities or roadsides or venues. Can you perhaps explain to me why you've taken one aspect of the candidates' handbook and adopted that in your view, you can put something there before midnight, but then ignored another important aspect, specifically about posters?

**Mr MOORE** - Like I said, the way in which that operates in other states is that very similar legislation exists. The regulation of signage by local councils or state governments is a

normal process of regulating elections, but the convention is that on election day, the normal part of campaigning is that those signs are able to be placed.

**Ms JOHNSTON** - That's what might happen in other jurisdictions. We're asking about the Tasmanian jurisdiction.

**Mr BAYLEY** - Where the convention is that it doesn't happen. That's the convention.

**Ms JOHNSTON** - We're busy handing out how-to-vote cards and things like that. I'm curious to understand why you've provided a rationale to yourself about adopting the process of putting the signs up, but you have ignored another aspect of the candidates' handbook which specifically talks about seeking permission from owners, the responsibility to seek permission particularly from local government bodies and the Department of State Growth and other state government departments. You've ignored that, but then chosen to make an interpretation of section 177 in the candidates' handbook and extend that application. I'm very curious to understand that.

**Mr MOORE** - Well, I think it actually does happen in Tasmania. It happens in federal elections. The regulation -

**CHAIR** - You have different rules for federal elections.

**Mr BAYLEY** - Different legislations.

**Mr MOORE** - No, the regulation of signs is still a local legislation. Unless we're going to say that every single candidate and party participating in federal elections for the last x number of decades -

**CHAIR** - No, this is the handbook for state elections. You quoted this handbook at us as your rationale.

**Mr BAYLEY** - That's right.

**CHAIR** - The handbook tells you also that you can't do what you did, so you've taken one bit to seek permission to do it but ignored the other part of the handbook, as Kristie has just said. Do you have an explanation for why you ignored that aspect of the handbook?

**Mr MOORE** - Like I said, we took the convention that -

**CHAIR** - You accept, though, that no such convention exists in Tasmania? Do you accept that, because it has not occurred before?

**Mr MOORE** - No, absolutely not. Like I said, in federal elections -

**CHAIR** - No. In state elections, no such convention exists. We've got explicit situations where we've actually avoided that.

**Mr MOORE** - But the electoral legislation does not cover -

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**CHAIR** - Yes, but no such convention. If you're leaning on convention, no such convention exists. Do you accept that, for state elections, in our state, for this matter?

**Mr MOORE** - Well, no.

**CHAIR** - Can you point to a convention that exists for state elections in our state?

**Mr MOORE** - I'm not making a distinction between state and federal conventions.

**CHAIR** - Does anyone want to follow up on this? I think we're getting there.

**Mr BAYLEY** - I was going to say, I guess, given there's a complete lack of contrition and acknowledgement, there's an issue here. It clearly is something that the electoral commission needs to follow up on and raise with you. Like you say, if not, and if it isn't possible through the electoral commission, clearly it needs to be something considered as part of the act, and a review of the act.

**Mr MOORE** - Yes, and like I've said, if the parliament wants to change that and the commission wants to make that recommendation, then it should do.

**Mr BAYLEY** - I don't accept that, but I would've thought there'd be a level of contrition, at least from the party, about this act, because it is new, it is novel, it hasn't happened before, and it's pretty dirty in the context of the elections we have here and how they're conducted. I think we can leave it there and move on.

**CHAIR** - Other areas for questions? I've got one to move on to. I'm interested in the part of your submission that spoke about inclusion of party logos on ballot papers. I'm wanting to understand, you say a number of jurisdictions have introduced that. Can you specify the jurisdictions that have introduced that and when that has occurred? How recently?

**Mr MOORE** - I don't have a list on me. I understand that it happens at the federal election and in a number of states. I don't have an exact list on me. I'm happy to provide that, though.

**CHAIR** - That would be good. Then the claim is there that it's a simple change that's proven to increase accessibility for voters with lower literacy levels and for voters for whom English is not their first language. I'm interested also in evidence for that claim as well.

**Mr MOORE** - I'm happy to go back and find the basis on which those changes were made in other states. I understand that the process states went through in the introduction of that, there was an extensive look at the sort of reasoning behind that. I'm happy to find that - I believe it happened through a committee similar to this in other states.

**CHAIR** - That would be good to have that provided so we can understand that better. How are independents dealt with in that sort of arrangement, if party logos can be on a ballot paper? I know you've said they're group ticket logos, but what if you're an independent? Is that also the provision that allows for the logo of an independent, or some sort of visual representation, for the independent?

**Mr MOORE** - I cannot recall exactly how it's dealt with. I would understand those from a visual consideration, that if a candidate exists in a grouped column that there's the ability to

have a logo, and if not, then they would not. I'm not across that implementation in every state. There may be variations of that.

**CHAIR** - Certainly, our upper House elections don't have groups. We're all individual candidates running for election in an upper House seat. How would independents be dealt with, in that sense, in terms of inclusion of logo or otherwise? You can imagine situations where an independent doesn't necessarily have a logo, as such. Are they able to put other visual representation of themselves on the ballot?

**Mr MOORE** - I think in most states, certainly federally, there's a process for registering a logo. Like registering a name or abbreviation, you are able to register a logo. There could be a similar process for upper House elections, because there's no grouped columns. I've certainly seen examples of ballot papers where logos are placed essentially down the side of a ballot paper, and I couldn't see why an independent couldn't have a logo in the same way that a party does, in that context.

**CHAIR** - An independent may not want a logo, as such, so there'd need to be some equity around providing for a photo or some other sort of visual representation that doesn't necessarily have to be a logo, I would have imagined. You're not aware of other jurisdictions grappling with that?

**Mr MOORE** - No.

**CHAIR** - Other areas? I know we've gone slightly past time anyway, so maybe is there anything that you would like to say as sort of wrapping-up comments before we finish up today?

**Mr MOORE** - I'd just like to draw the committee's attention to the vote saving provisions. I know it's been a discussion on a number of things. I think this is a bit of a no-brainer and a change that would significantly enfranchise a number of people's votes that are certainly, in my view, unfairly excluded in the process.

Just to also draw the committee's attention to expenditure caps. I think the increase in the size of the parliament and the number of people participating inevitably means, you know, more and more money being introduced. I think there's certainly a move right across the country towards expenditure caps in many different variations of that implementation, but I think that is certainly something we should be looking to move towards in Tasmania as well.

**CHAIR** - There'd be a lot of agreement at this table from many of us around that, thank you. Certainly, public funding without expenditure caps or without some form of donation caps is irresponsible, in my personal point of view. Thank you for drawing our attention. In terms of vote saving provisions, thank you. We've also received interesting evidence from other submitters and at hearings with some suggestions around that. There is some sort of commonality there about the value of considering some of those, so I appreciate you drawing your attention to that.

I'm going to finish up by advising you, as I advised you at the commencement of the evidence, what you've said with us here today is protected by parliamentary privilege. Once you leave the table, you need to be aware the privilege does not attach to comments you may

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make to anyone, including the media, even if you're just repeating what you said to us. Do you understand this?

**Mr MOORE** - I do.

**CHAIR** - Thank you so much, Mr Moore. We appreciate your time through the submission and the evidence provided today at the hearing.

**The witness withdrew.**

**The committee suspended at 3.21 p.m.**

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**The committee resumed at 3.27 p.m.**

**CHAIR** - Welcome, attorney, to these hearings for the Joint Standing Committee on Electoral Matters, our first inquiry as a committee into the review of the 2024 general House of Assembly election and the periodic Legislative Council elections for 2024. We appreciate your time appearing before the committee. The members of the committee who are here - we've got Simon Wood, member for Bass, on the screen; Cassy O'Connor, member for Hobart; Kristie Johnston, member for Clark, Vica Bayley, member for Clark; Bec Thomas, member for Elwick, and myself as member for Nelson.

Thank you for coming along with your team that are here to speak with us today. We'll do the formalities and I'll read the formal parts before we begin giving your evidence where I'm just going to check that all people here giving evidence are aware of, and have received the guide sent by the Committee Secretary about giving evidence in this context. I'm going to reiterate some important aspects of that document.

This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom, without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings.

This is a public hearing. Members of the public and journalists may be present and this means your evidence may be reported. It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. I hope that's clear and do you understand that?

**Mr BARNETT** - Yes.

**CHAIR** - Thank you. We'll do some statutory declarations, if you will, minister, with your people at the table and we will proceed in the normal way where, if you wish to make some opening remarks, you're very welcome to do so. and then we'll have some questions, no doubt.

**Mr BARNETT** - Thank you very much, Chair. Thank you for the opportunity to be here today. It might be good if those from the Department of Justice could perhaps introduce themselves and swear accordingly.

**Ms KRISTY BOURNE**, ACTING SECRETARY, **Ms PAULINE VAN ADRICHEM**, DEPUTY SECRETARY JUSTICE AND REFORM, AND **Mr BRUCE PATERSON**, DIRECTOR STRATEGIC LEGISLATION AND POLICY, DEPARTMENT OF JUSTICE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**Mr BARNETT** - Thanks very much, Chair, and a short opening statement to thank the committee for the opportunity to share some remarks today on the important role that you have in response to the terms of reference. Certainly, on behalf of the government, I wanted to indicate that, and the invitation to appear today and to provide a submission as well.

The government operates in accordance with the caretaker conventions during an election, and the government and the State Service have essentially no involvement in the day-to-day functions of elections. In this view, and with respect to the independent operation of the



Tasmanian Electoral Commission, the government does not feel it was appropriate to make a submission, and therefore has not provided a submission on this occasion.

I note that my department supports the independent operations of the Tasmanian Electoral Commission by providing financial, operational and human resources support. We support the work, absolutely, of the Tasmanian Electoral Commission and respect its independence and have every confidence in its ability to undertake its duties.

Since the 2024 State Election earlier this year, I've met with the Tasmanian Electoral Commission to discuss some of their concerns. These concerns included reforms to the *Electoral Act 2004* to improve access to voters, especially those with accessibility issues.

The commission has also raised with me their organisational structure and the need to expand their organisation to meet the upcoming electoral needs of the Tasmanian community. In my capacity as Attorney-General, I have decided to propose amendments to the *Electoral Act 2004* to improve access to voting at future parliamentary elections, particularly for electors who are experiencing barriers to accessing traditional voting services due to disability. I made this decision after meeting with Blind Citizens Australia and Disability Voices in early August and following discussions, consultation and representations from the Minister for Disability, Jo Palmer.

I have also provided in-principle support for the Tasmanian Electoral Commission's organisational expansion to increase the capability of the commission. My department is helping the commission with this process from a human resources and finance operation perspective. On a final note, I'd like to thank, again, the Tasmanian Electoral Commission for their continued efforts to improve Tasmania's democratic system. Thank you, Chair.

**CHAIR** - Thank you very much for that; we appreciate it. I think one of the things we're quite interested in, given that in terms of the conduct of elections our Electoral Commission is absolutely central to that, and as you say, we all respect and value its independence and good functioning, I imagine we're interested to hear a bit more about that delicate relationship between the department and the Electoral Commission, the support that's provided and the sorts of functions the department fulfils on behalf of and for the Electoral Commission, while also maintaining that independent entity so there's no perception of any direction or influence from the department or from the political space. Can we have a clearer understanding, for example, of the HR connections between the two so that we can understand how staff within the Electoral Commission have a relationship with the department and what that looks like?

**Mr BARNETT** - Yes, absolutely. Thank you very much for the question. I might just quickly respond to indicate our strong support for the Tasmanian Electoral Commission and highlight, as I said in my opening remarks, the independence of the commission. I did indicate that I've met with them earlier this year and I do meet with them from time to time. I think earlier in the mid-year we had a good discussion about their plans for the future in terms of building capacity and growing that capacity to meet the needs of our democratic system. It was a good discussion, we have a good relationship, as far as I'm concerned, and I know the department has a good working relationship with them in terms of those operational matters.

With respect to the human resources aspects and other related matters, I'll pass to my acting secretary, Kristy Bourne.

**Ms BOURNE** - Thanks, Attorney-General. We have a really good working relationship with the commission and the commissioner. As acting secretary, I meet with the commissioner four or five times a year, just so that we can catch up around themes, issues and, importantly, any issues relating to elements of the service level agreement that we have between the agency and the Electoral Commission.

They are clearly independent and, as I think Mr Hawkey has talked to this committee and others about a great deal, they're very well progressed through the restructure. We're seeing that organisation really grow in a very positive way. The agency supports that in terms of the human resource assistance that we provide, particularly in terms of payroll, working out or assisting them in the development of their establishment, classifying positions and the like, as they're state servants, and other human resources-related parts of that service level agreement. Really we are beholden to the views of the commissioner in terms of how he wishes to establish his structure, but obviously we provide assistance to make sure that classifications and the like are consistent with other similar positions across the State Service.

Similarly, we provide finance-related support. Again, the commission has its own finance-related staff and human resources-related staff and it is growing its capacity to do more of that work in-house, but the SLA between the two organisations ensures that support's provided in terms of paying people and providing additional support, including things like change management services and the like, which we're providing, I guess, in a more in-depth level at the moment because the process to appoint a change manager unfortunately didn't yield any suitable candidates, so as an interim measure we're ramping up the change management resources that we're providing to the commission.

**CHAIR** - I see. So, as part of the review that we understand was undertaken of the internal structure and the needs going forward that has resulted in a proposed new internal structure with extra capacity included in that, the change management is in relation to moving into that new structure and that's now being provided out of the department, from what I've just heard? Yes. What was the status of that review and then proposed implementation of a new structure in terms of needing permission or authorisation through you, Attorney-General, or through the department? Did you have to tick off on the review being done in the first instance, for example, and any funding associated with it? In terms of authorisation to move forward with the restructure and the funding of that restructure, what is that decision-making and authorising relationship?

**Mr BARNETT** - Thank you very much for the question. I think in terms of the process I will refer to the acting secretary shortly, but I did have a full, frank and open discussion when we physically met in July in terms of that reorganisation to build capacity and provide that support. Subsequent to that, as my secretary can clarify in a moment, we certainly provided in-principle support to the TEC to progress accordingly and with an expectation that my department would work with them on that organisational review. That's as I recall it, but I will pass to my acting secretary to assist.

**CHAIR** - Thank you. I understand you've provided in-principle support, so that's sort of an expression of support, but I'm interested in whether you had to provide the authorisation for that to proceed and in terms of funding it, because some elements would be funded under their reserve by law, but other elements aren't. I'm trying to understand if there was a decision-making authorising aspect through you, Attorney-General? I'm trying to get my head around that.

**Mr BARNETT** - My understanding, and I'll seek clarification through my acting secretary, was that we had that meeting in July and there was further communication between the TEC and myself. Following advice from my department, I provided in-principle support for that consistent with the reserve-by-law approach to support their work, but I'm more than happy to pass to the acting secretary to clarify those matters and to put that information on the record for the committee.

**Ms BOURNE** - The department has provided advice to the commission. I think members will know this process commenced through an independent external review to look into the structure to meet the needs ongoing for the commission, particularly with the legislative reform. Then, as that reform has been broken down into tranches, the department's been the conduit effectively, albeit the commissioner, as the minister has said, has met with the minister on occasion to provide an update on the progress of the restructure. We've then provided briefings through the agency to the minister updating him on where that work is at.

The majority of the positions are funded under reserve-by-law due to the fact that they have become required through changes to legislation, and we as the agency assisting with that work have been providing Treasury with an update about where that's at so there's forewarning about the future drawdown on reserve-by-law funding. The commission is currently looking at filling five or so more positions as the second tranche of the restructure. Tranches 3 and 4 it's hoped will commence in early 2025. I think from the agency's point of view it's a considered and reasonable restructure that will really see the commission grow exponentially to meet the demand that is done in a way that's been considered and informed about how that will be funded and is responsible in terms of what the actual need is.

**CHAIR** - I know we've got follow-up questions from others but just to really drill down here - the funding that's required for the restructure, I heard you say that the large bulk of those positions are going to be covered by reserve-by-law funding because they're required through legislation, but is there then a decision point about an increase to non reserve-by-law funding to the commission that has been made and is that decision maker the minister as head of the department?

**Ms BOURNE** - It's not my understanding that any request for additional appropriation funding has been made or is required to be made to give effect to the restructure.

**Mr BAYLEY** - I guess as employer you've got responsibility for the staff of the Electoral Commission, health and safety and providing a safe workplace and an absolute duty of care to their wellbeing, with the exception of the commissioner because he's employed elsewhere, but you'd have to accept that the culture and health of the organisation really is set at the top, so the commissioner is sort of responsible there.

How do you marry that, I guess, dislocation between having a responsibility to provide a safe workplace and having that duty of care, but without actually having your hands on the lever to be able to deliver the culture and, in some ways, the delivery of the new structure and so forth to ensure that it is a safe, healthy, sustainable workplace? What sort of checks and balances have you got in that place? I mean, we have heard some evidence here around issues within the commission, so just interested in what kind of oversight and how you extinguish your duty of care to your employees.

**Mr BARNETT** - Yes, I think it's probably more of an operational question, which I'll put to the acting secretary.

**Ms BOURNE** - Very good question, something that the Justice department is quite used to managing, those complex relationships where they're independent statutory officers overseeing a function, where the staff of that operation are state servants and, through service level agreements, the agency pays them, provides all of those sorts of corporate overheads to them.

It's really important that we have really good relationships with the statutory officer, in this case, Mr Hawkey. Catch up with him regularly, as do our relevant heads of HR, workplace relations, finance with Mr Hawkey and his staff to make sure that the values approach of the agency, our workplace relationship policies, all of those things continue to permeate no matter where the staff member is. And continue communication so the staff are part of the normal agency communication channels. They have the ability to access our wellbeing support team, our Converge employee assistance program and the like. It's part of my role as acting secretary to make sure that the leadership of that organisation is very clear about the department's values and the approach that we take, albeit that they go about their role with a different purpose but with, I think, the same aim of making sure that the workplace is one that people want to come to each day.

**Mr BAYLEY** - What is your assessment of the workplace as it stands at the moment within the Electoral Commission? Have you got the most recent spot checks on employee health wellbeing and attitudes towards their work? And what would your assessment be as to the state of health as it is at the moment?

**Ms BOURNE** - My assessment at the moment would be change can be difficult and I think not just the pace of change, but the nature of the change that the commission is embarking upon doesn't always mean that people are necessarily comfortable with that change and we react to that in different ways. That's why the agency, in the absence of the TEC being able to recruit a change manager, has really prioritised our change management team getting in there and making sure that staff are being listened to and informed about each step of what is a fairly fundamental restructure. That can be threatening to some people as well when roles change and the like.

But I think, I was out there last Friday at the Moonah office and there are new faces, there are old faces, and they're preparing to accept new people into that. I think this is an opportunity for the commissioner to really make their mark in terms of what they see as the right workplace culture and make sure that people feel supported as new workload comes along. But it's always a difficult time, particularly in the face of that change. It's about making sure that we manage that properly and make sure that we get that right.

**Mr BAYLEY** - Would you say there's been an unusually high level of turnover of staff or do you hold any concerns around culture and sustainability there?

**Ms BOURNE** - I wouldn't say that there's been an unusually high turnover of staff, and I'm not concerned about the culture that the commissioner has in place, based on my experiences talking to staff and being on the ground.

**Mr BAYLEY** - Thank you.

**Ms JOHNSTON** - I'm keen to explore what both Meg and Vica were talking about in some further detail. Yesterday we heard evidence from the commissioner around some of the pressure points and recognise that they've gone from a very small organisation to a slightly bigger organisation shortly and that their pressures, in particular, he talked about was the inability to develop policy specific for the commission, whether that related to HR policies, work health and safety policies, accessibility policies on polling day, and things like that.

And so I'm curious to understand the nature of the relationship with the department about expanding funding to perform those core organisational functions, which might not be funding reserved by law, but are essential to have an operation of an efficient and effective office. Has the commissioner ever made representations to the department that funding is required for those basic organisational requirements, over and above reserved-by-law requirements? Has that happened, and how has that been received?

**Mr BARNETT** - Thank you for the question. Acting secretary?

**Ms BOURNE** - The Electoral Commission, like other parts of the agency, makes requests for additional positions through our normal agency executive process. The agency executive some time ago, when the proposed restructure and the tranching of it was put to us for consideration from the commissioner, didn't express any concerns about what was proposed. And very recently I know we have put in place through our HR systems to be advertised five legislation and compliance positions, a governance position, another IT support officer position, and an elections coordinator based in the north of the state.

So, certainly there is no need that I'm aware of that the commission has sought that the agency executive has not agreed with, noting their independence. We would have a collegial discussion if we thought that a position was maybe classified a bit too high, or whatever the case may be.

I am aware that that additional capacity absolutely is required, particularly to complete a lot of the work required around the guidelines and the like. And speaking with the commissioner last week, I think the additional legislative and compliance positions will really boost his existing team's capacity to finalise work on those guidelines. But there's nothing, from the agency's point of view, that is preventing that work to obtain that extra resource from happening.

**Ms JOHNSTON** - Would it surprise you, then, that the commissioner- I don't want to verbal the commissioner, but my understanding of his evidence yesterday was a number of policies that he recognised were important to have for the commission weren't in place because of resource constraints. Would you be surprised that this was a reason for those particular limitations in terms of the policies being in place?

**Ms BOURNE** - Not surprised, in the sense that the restructure has been set and there's a huge body of work that the commissioner has identified needs to be done. And at this point in time, in the absence of being able to recruit some of those positions, he wouldn't have been in a position to really progress those pieces of work as much as he would like. And, we have had a frank discussion about some delays in advertisements going live and those sorts of things, which we talk about a lot. The agency often has in excess of 100 positions that are ready to be advertised and the like, so sometimes that takes a bit longer than we would like.

I am confident, though, having spoken with Mr Hawkey, that he's got the structure right so that he has people coming on board who can really address some of those key areas that he hasn't been able to.

**Ms JOHNSTON** - The commissioner talked yesterday about how their workload obviously increases exponentially when it comes to election time, and that's compounded when there's a number of elections occurring in a very short period of time. He talked about staff burning out, in terms of some people say, 'I can't do another election, I haven't got another one in me'. Is that a concern that the department takes on board, in terms of ensuring the wellbeing and welfare of staff at the Electoral Commission?

**Ms BOURNE** - Absolutely. We know, and talking from people on the ground, particularly when there's a rush, for lack of a better term, on elections. I mean, that is really intense work. And for some people, and I think without - anecdotally, you hear that that is why some people who've been with the commission for a long time have decided to look for another position within the service or external. Very conscious of that. And our wellbeing team and our HR, particularly our workplace relations team, does a lot of work on the ground to make sure that people are supported, particularly when workloads increase.

But I think the commission has recognised, with the agency's support, that overall there needs to be an uplift in the number of staff who can share that work, noting that, come election time, the workforce really expands with a casual workforce as well. But there are a core group of staff that maintain those core services throughout each election. And to make sure that that load is more evenly spread, I think, is a key focus of the restructure as well.

**Ms JOHNSTON** - That casual workload, as I understand, is not covered by the department's HR and work, health and safety policies. That is done separately. It is only the permanent staff of the commission that is covered by the department. How does the department assure itself that the casual workforce has adequate protections and that the commission is well placed to be able to put in place those policies and important measures?

**Ms BOURNE** - We still have, or I as head of agency, have responsibilities, the PCBU, to casual employees and, certainly, work quite closely with the commission in terms of making sure that casual employees have all the information around safe workplaces and the like. For example if, heaven forbid, there is an incident or an injury that a casual employee happens to endure when they're under our employ, we still provide assistance to them. For example, they are still entitled hypothetically to make a workers' comp claim and the like. So, we treat them equally, effectively, in terms of the information that we provide to them. Given that it's quite a consistent surge in the workforce, and I know that the commissioner and his team do a lot of work about making sure that those employees, some of whom have been on the casual books for some time, are aware of the safe workplace protocols that they have in place.

**CHAIR** - I'm just going to stay on this area. I know we have other areas to move to. Just two other things on this. On that casual workforce, would the department have oversight of arrangements where, say, an employee was working for extensive hours. Is there auditing or oversight of whether there's appropriate hours being utilised? Would there be appropriate oversight of situations that might be outside of what we would normally expect to be allowable under workplace conditions? Is that something you would pick up as a department?

**Ms BOURNE** - Probably not as a matter of course. That would really be within the purview of the commissioner and the rostering that is developed from their office. But without speaking for Mr Hawkey, I'm sure it's something that they're conscious of. And if they needed assistance in terms of managing those rostering arrangements, which they're very good at doing, given the number of times and criticality of their ability to stand up that response. But it's not something that the department would have oversight of.

**CHAIR** - Just one further thing on the turnover of staff. Since, say, 2016-2017 through to now, my understanding would be, from some evidence presented to us, that there has been a high turnover of staff in a very small workplace across that period of time. So, not just dating from times that this recent restructure has been proposed, but from before that. Does the department do exit interviews with people leaving that workplace? Have you done exit interviews with everyone leaving since, say, that 2016-2017 period?

**Ms BOURNE** - We do undertake exit interviews. They're not mandatory, however. And I don't have the data front of me about how many of the exits from the commission have voluntarily participated in an exit interview. And it's not something that we mandate.

**CHAIR** - Is that something we could seek some data on with a question on notice to you after the hearing, minister?

**Mr BARNETT** - I would have thought so, I think -

**CHAIR** - Obviously de-identified.

**Mr BARNETT** - Yes, I think it's a good question and something we could follow up on. Sure.

**CHAIR** - Thank you. We'll send something through on that.

**Ms O'CONNOR** - I'm interested to understand what kind of engagement you, as minister, have with the electoral commissioner, for example. There is very clear provision in the functions and powers of the commission under the act for the commission to advise you, as minister, on matters relating to elections. You've flagged that we've got a section 196 amendment bill, which is going to get clagged up in this committee for a little while, that there'll be some voting access amendments potentially. A lot of it is tinkering around the edges of an act that is 20 years old.

Yesterday, Andrew Hawkey suggested, after a number of questions that made clear we had some issues with the operations of the act, that it might be time for a review of the act. What are your thoughts on that, because there are other issues, like how you minimise informal voting, how you address the different rules for the assembly and the council? Do you agree it's worth considering?

**Mr BARNETT** - Thank you for the question. I wouldn't agree with the premise of the first part of your question. I think it's very important, particularly with regard to ensuring access to our democratic opportunities for other Tasmanians, for people with disabilities. I see that is quite important. And I know it's going through a process. I'm just acknowledging that. I don't see it as tinkering. I think it's -

**Ms O'CONNOR** - It's just one change.

**Mr BARNETT** - I'm with you. I see it as important. That's all I'm trying to make the point.

**Ms O'CONNOR** - I agree.

**Mr BARNETT** - Thank you. Having said that, I think any improvements that we can make to our laws across the board, as Attorney-General and Minister of Justice, is worth considering, particularly with respect to democracy and the way we operate our elections. I have an open mind as an attorney and, I think, on behalf of the government, I would also indicate to you that I think we've had a fair assessment and review of our electoral disclosure and funding laws. We've had quite a lot of debate and discussion about that as a parliament -

**Ms O'CONNOR** - There'll be more.

**Mr BARNETT** - for some time. And there may be more, subject to the views of people around this table and elsewhere. I want to acknowledge that as well. There's been, I would say, a fair consideration of a substantial part of the electoral laws which, as you've indicated, go back many years now, a couple of decades. That's probably my summary response.

**Ms O'CONNOR** - I've got a slightly hot topic here for you. We had a presentation to us yesterday from Roland Browne, who you would be well aware of. He said that as this committee is examining the conduct of the past election, it should examine the conduct of the Premier and the treasurer when the Premier said, on the first day of the campaign that the government would spend not one red cent more than \$375 million, which Mr Browne described as misleading. Then the treasurer went on to make misleading statements in relation to the GST exemption. Do you agree that it's on all of us, as participants in democracy, to be honest in a campaign? Mr Browne wants this committee to examine the conduct of your colleagues as part of our examination of the last state election because he said it was a critically timed deception.

Do you have thoughts on Mr Browne's request that we examine this, given that it framed up the campaign and led Tasmanians to believe a certain thing about how much money would be expended on the stadium and how much we might receive from the Commonwealth as its contribution?

**Mr BARNETT** - Thanks for the question. I appreciate the views of Mr Browne and I'm fully aware of his active role in opposition to the stadium. I hope any consideration of that submission be seen at least in that context.

With respect to what is said and done in an election, another point I made earlier is that I support democracy, free speech. We do have our electoral laws in terms of ensuring that that's done and undertaken in an independent way by the Tasmanian Electoral Commission, which I've indicated support for in terms of its independence and ability to operate the democratic processes effectively. I think in Tasmania we can be very pleased and proud overall of our democratic processes.

**Ms O'CONNOR** - Absolutely.



**Mr BARNETT** - I'm reflecting on the US processes as we speak. Obviously, they're going through that. I support democracy in the biggest. In terms of democracy, it's incredibly important in terms of the US, but their system is different. Obviously, compulsory voting in Tasmania and in Australia. So, there are different aspects of our voting system and our electoral laws that I think we could reflect upon. As I said earlier, I'm always happy to consider ways that they can be improved.

Just picking out a particular statement from one person or political party compared to another, I think, is clearly a matter for the committee, but it's something that I would urge you to think very carefully about as you consider your terms of reference as it relates to the election this year and the Legislative Council elections as well.

**Ms O'CONNOR** - On the terms of reference, it's our job to examine the conduct of the election, and it's not that Mr Browne just sort of pulled a couple of statements out of his hat. It's that there were these two critical statements made at the beginning of the campaign. We've had a discussion here over the table over the last couple of days, for example, about truth in political advertising and the issues that there may be with that for the Electoral Commission, which was concerned about that. Don't you agree, as a broad principle, that premiers and ministers during an election campaign, particularly when people have their eyes on them, have an obligation to conduct themselves in an honest way?

**Mr BARNETT** - I think the same rules should apply to everybody in an election, whether they be premiers, ministers, opposition leaders, members of parliament, or candidates when the election is called. Broadly, that's my understanding of how the system works and it's important. Clearly, you need to continue the functions of government through the Tasmanian State Service to provide those essential services that Tasmanians require, but you've got to be consistent in terms of what is said and done, and the same laws should apply to everybody equally.

**Ms O'CONNOR** - The Greens don't have any trouble being honest with the Tasmanian people. I just thought I'd put that on the record.

**Mr BARNETT** - Of course you would. I had no doubt that you would express such a view.

**CHAIR** - To another topic, if I may. I'm interested in the IT and cybersecurity arrangements for the Electoral Commission. Obviously, that's a pretty sensitive area and it also needs to be recognised that it needs to be separate and independent in that space and not necessarily an integrated part of the department's IT systems and arrangements, because there's an important sort of independence that needs to occur. However, the Electoral Commission has, as we've talked about, a very small IT staffing team; that is our understanding. How is the department and the government reassuring itself and understanding fully the degree to which the arrangements that are in place around IT, and particularly cybersecurity, are appropriate for our Electoral Commission, given there's that separation? Is the Electoral Commission able to draw on the resources and expertise in those areas from other parts of government to advise or help design or ensure that that's up to snuff?

**Mr BARNETT** - I think it's a really good question, particularly in terms of IT and cybersecurity, not just in Tasmania but across Australia. Of course, in the last 24 hours we've heard allegations of the Russian government being involved in the US election in terms of totally inappropriate and illegal behaviour. I just draw that to your attention; that's been in the

public arena. I might pass to the acting secretary to speak to that. I also indicate that I've had that discussion with the Electoral Commission earlier this year in terms of providing support and highlighting the importance of how we protect ourselves in terms of cybersecurity, IT fraud and the like. It's certainly at the forefront of my mind and I know it's at the forefront of the Electoral Commission's mind as well. To add to that answer, I'll pass to the acting secretary.

**Ms BOURNE** - Thanks, Attorney. Absolutely yes. The commission has been supported by our chief information officer and our chief information security officer, particularly in relation to some of the growing challenges or threats, probably more accurately, around cyber threats. I know the commissioner engages with his jurisdictional colleagues and central federal government agencies through the AEC about increasing threats to look out for. The commission currently has a manager of IT and an IT support officer. They're seeking to add two additional positions to their IT complement to give them still a relatively medium-sized team of four to oversee current IT requirements but election systems more broadly, particularly as they move to an electronic disclosure regime.

Like all other arms of the department, so to speak, our central chief information protection officer also feeds into the whole-of-government CIO office as well. It's a shared resource and we're always ready to assist. I think some years ago when there was a potential breach of one of the third-party systems the commission had used and was publicly reported upon, certainly the agency at that time stepped in and was effectively the conduit between the whole-of-government response to mitigate any risk coming out of that. That's certainly how we intend that relationship to continue.

**CHAIR** - Given that degree of specialist expertise that's there in the department and the greater government areas, is there always an element of review of the plans and the implementation of plans occurring in the IT space in the TEC to ensure that it is fit for purpose and not posing any particular risks that need to be addressed?

**Ms BOURNE** - My understanding from discussions very recently with the commissioner is yes. That's something he's seeking advice and input from his jurisdictional colleagues about how best to manage and what threats to prepare for, given some other jurisdictions are a bit more advanced in terms of their systems. As an agency, that's something our chief information officer and his team are always looking at acutely in consultation with the whole-of-government CIO, but the commissioner taps into the resources from the AEC as well.

**CHAIR** - I know I'm sort of belabouring this a little bit but I just want to really drill down into it, because I understand that as you've described, the commissioner can draw on the expertise and get advice from the department and from other experts in government on this area. What I'm interested to know is if there was a critical risk identified because of those interactions, the decision-making within the commission is up to the commissioner to design and authorise systems within his purview. Can the department and the government step in if it's identified that the path they're heading down is not appropriate or ideal or poses too many risks?

**Ms BOURNE** - While the commission is obviously independent, history has dictated that they're very open to advice from experts in a particular area. I think in terms of a cyber risk or if there was a cyber event, then the whole-of-government approach would ordinarily kick in and the resources and advice would be provided to the TEC, and without verballing the

commissioner, I'm sure they would take that advice based on the experience particularly of our CIO and the whole-of-government CIO.

**Mr BAYLEY** - Attorney, on the conduct of the election, one thing your government's been criticised for in repeated elections is pork-barrelling, the establishment of kind of community project funds, the solicitation of bids for those funds from community groups, the assessment in-house within the Liberal Party, the announcement of that in the election context and then the criticism flows. That's happened for the last three elections. The Integrity Commission has described it as indirect electoral bribery and it happened again this election. We had the opportunity to ask questions of the Liberal Party director yesterday and I for one certainly wasn't satisfied with his answers. My questions to him went to the decision-making processes inside the party, who and how decisions are made about those funds and about the allocation of those funds. Could you help us with some clarity on how the party makes those decisions, who makes them? Is it a committee of people and were you on it?

**Mr BARNETT** - All questions with respect to the Liberal Party of Australia (Tasmanian Division) should be directed to the state director. I know you had an interchange yesterday and there was an appearance by the state director before the committee. Of course, I refer to the evidence provided and draw that to your attention, certainly from my point of view as a member of the government, but also a member for the Lyons electorate for the Liberal Party. Something I've been very strong on, together with my colleagues in the Liberal Party, is that we support free speech, we support the ability to express a view, we support freedom of expression and democracy and we support the people having a right to have a say and. It's important for the people of Tasmania to be able to express their thoughts and views on the different views and policies, positions, initiatives, commitments of the various political parties and, indeed, the independence and then register that view accordingly at the ballot box.

**Mr BAYLEY** - You do accept, though, that there has been significant criticism of that particular approach of the Liberal Party in terms of soliciting applications for community grants and then allocating them in the election context and that there have been propositions from the Integrity Commission and others around how that could be better carried out, how it could be carried out outside an election process, how that you could allocate a bucket of funding for community projects that is then distributed independently and transparently and against set criteria, none of which are done via the process that your party goes through?

**Mr BARNETT** - Again, thank you for the question and I don't concur with the premise of the question -

**Mr BAYLEY** - That that advice hasn't been received?

**Mr BARNETT** - I don't concur with the premise of the question. What I do say is that it is important for the public to be aware of the views of the various political parties. I do acknowledge there has been criticism in the public arena of, not just our party but, of course, the Labor Party and indeed other -

**Ms O'CONNOR** - It's hard to tell the difference these days, to be honest.

**Mr BARNETT** - The views of other people and/or other parties, but what I do note and highlight is that we think it's important for the people to have the say and on the flip side, leaving all the decisions to members of the public service as to what's in the best interest of the

community, in fact, has the potential to undermine our democracy and to disallow the views of the public to be expressed.

I am a very strong supporter of democracy and allowing and encouraging the Tasmanian people to have their say. I've always said that democracy, where people are engaged and proactive and expressing their views, is the best form of democracy possible. The level of apathy and complacency is an area where I would be concerned, so encouraging people to have their say, expressing their views, is a good thing.

**Mr BAYLEY** - The problem being, of course, that this process, as it is run and conducted, is seen as inappropriately influencing people when they go to the ballot box. Putting that aside, your state director seemed to indicate that if we have any problems with it, it's the budget. The budget is where that money is ultimately reflected and those allocations are ultimately reflected; that, to me, sounds like a very dangerous invitation to us as parliamentarians to vote against the budget simply because of some maladministration from the Liberal Party.

I mean, have you ever voted against a budget in your many years of opposition and would you agree that it's a dangerous invitation for the director to put to this committee in terms of reflecting our dissatisfaction with that process?

**Mr BARNETT** - First of all, I didn't hear all of the evidence of the state director, so I can't comment on that. I assume he would have been speaking to the power of political engagement and the right to have a say in the parliamentary process. Having said that, fortunately, I haven't been in opposition in state parliament, I've been in government and it's a wonderful place to be, to make a difference for the people of Tasmania. It is something I really appreciate and am honoured to be able to do. However, at a federal level, I have been in both government and in opposition when in the senate for nine-and-a-half years. I haven't voted against the budget in the Federal Parliament, no.

**Mr BAYLEY** - Despite dissatisfaction with it, undoubtedly?

**Mr BARNETT** - Yes, I am just sharing with you my track record.

**Mr BAYLEY** - Would you agree it is a dangerous invitation for the state director to put to us as members of parliament, to vote against the budget simply because we're dissatisfied with the transparency and accountability of your process?

**Mr BARNETT** - Thank you again for the question. I don't know everything. I haven't seen the transcript.

**Mr BAYLEY** - That's what he put to us. That's what he put to us, that ultimately, the reflection is through the parliament.

**Mr BARNETT** - I'll respect the state director entirely and the submissions that he's made to the committee. Of course, I assume he's talking about your ability to express a view in the parliament during the budgetary process. Of course, parliamentary privilege allows for that, for you to express a view accordingly. I know those views have been expressed. But, what the committee does, or what you do in terms of his evidence, that's a matter for the committee.

**CHAIR** - Following on from that, just to check in with you, Attorney-General, the two research papers that the Integrity Commission has done on this topic, have you read those?

**Mr BARNETT** - Which two are you referring to?

**CHAIR** - The two that were done after the 2021 state election? There's a Part 1 and Part 2 available on the Integrity Commission's website -

**Mr BARNETT** - After the 2021 or 2024 election?

**CHAIR** - After the 2021 election. The Integrity Commission, because of the complaints raised in relation to the pork-barrelling by the major parties, the Integrity Commission looked at this and engaged in research and came out with two research papers with recommendations in them. Have you read those research papers?

**Mr BARNETT** - I'm aware of them. I've been briefed on them, but that would have been some time ago.

**CHAIR** - You haven't read them personally, then?

**Mr BARNETT** - No, I would have perused them. I'm not sure I would have read every word, but I would have perused them at the time. I would have been made aware of them and certainly been briefed on them. I should add to that, I respect the Integrity Commission, as I've said publicly, I appreciate their independence, and that's why I respect that and I consider it carefully and take it very seriously.

**Ms O'CONNOR** - Minister, just following on from Mr Bayley's questions, this goes to what's been loosely termed 'sports rorts', but you know, 'indirect electoral bribery' is a term that was attached to it in the first Integrity Commission paper of the two.

But the second recommendation of the second paper is that government consider, before the next House of Assembly election, which happened in March this year, introducing mandatory grant rules modelled on the Commonwealth Grant Rules and Guidelines, ensuring they include compliance mechanisms and apply to ministers and ministerial staff, grant commitments made during an election period, ad hoc and discretionary grant commitments, and the Premier's Discretionary Fund. To your knowledge, has any work taken place on establishing a set of, like, a levelling of the playing field, if you like, for participants in a democracy so that communities, individuals, and organisations can make a free and fair choice? Has any work at all happened on establishing those grant rules for campaigns?

**Mr BARNETT** - Thank you very much for the question. Obviously, the Premier would be more relevant in terms of the question and the Department of Premier and Cabinet around the grant rules that you refer to. Obviously, I'm familiar broadly with the report and recommendations. I don't think there's been any work done in my department on those grant rules.

**Ms O'CONNOR** - Okay, so the second recommendation, and you know, you are now the Deputy Premier, obviously the Treasurer, Attorney-General, and Minister for Justice, so you're very senior in government. But the third recommendation is that the government consider adopting the remainder of the recommendations made in 2011 by the Tasmanian

Auditor-General about the Premier's Sundry Grants Program, which is now the Premier's Discretionary Fund. That was around tightening up the processes, making sure there was more merits-based assessment of applicants for funding under the discretionary fund.

Do you agree that we've got some quite loose processes here in Tasmania around the disbursement of public funds or promises to disperse them to communities that are not transparent, were decided, as we heard yesterday, by Liberal Party members, where the merit was, in particular grants during a campaign? Do you agree we need to tighten this up a bit so that we can have free and fair elections?

**Mr BARNETT** - As I said earlier, I certainly support free and fair elections, and the rules applying to everybody equally. I think your questions regarding the Premier's Discretionary Fund are best put to the Premier.

**Ms O'CONNOR** - But the Integrity Commission, to be clear, and that's why Ms Webb's questions, importantly, Integrity Commission reports to you - these are reports that would come within, broadly speaking, your area of statutory responsibility. There is an obligation on you, at some level at least, to respond to these recommendations.

**Mr BARNETT** - Thanks for your question. Clearly, with respect to the Premier's Discretionary Fund, that's a matter for the Premier.

**Ms O'CONNOR** - Not the Treasurer a little bit, too?

**Mr BARNETT** - More broadly, however - I do, as I said earlier, support free and fair elections. I think the rules should apply to everybody equally. I've always said that consistently. People should have the ability to express their views in terms of processes.

I think there has been discussion and debate in the various chambers, certainly our chamber, in recent months and years - which Cassy O'Connor will recall, the honourable Leader for the Greens. There has been a lot of debate and discussion about these matters, the merits and otherwise of those, and I think that's healthy. I think it's a good thing. I think those views that were expressed at the time, I think they have merit. As I say, I'm always open to improving the system, and happy to take that into account.

**CHAIR** - The beauty of an independent Integrity Commission providing expert advice after thorough research and making clear recommendations - the beauty of that is that it should be readily acceptable by government interested in ensuring free and fair elections, and rules applying to everybody equally - and especially a government interested in dispersing public money in ways that are open, transparent, and equitably accessible to all.

It doesn't appear that your government has an appetite for that, so it's hard not to draw conclusions from that about your government's commitment to those things.

**Mr BARNETT** - Well, I disagree with that. As a government, I think we do support free and fair elections. I think we do support a transparent and open approach. I think we do support a rigorous approach to the spending of government money - certainly for myself now, as Treasurer of two weeks and a day, I see that as very important, and certainly, I will be focusing on those matters, and I take them very seriously.

## PUBLIC

**Mr BAYLEY** - On that, though - Treasurer, minister, Attorney - do you think an internal Liberal Party process to disperse money in an election campaign, with decisions made as we heard yesterday, by volunteers, is a rigorous process? Is that a rigorous process in your mind?

**Mr BARNETT** - I think I've answered that question probably at least two times earlier today. I know the criticisms that you've made of our government, and likewise I think the opposition as in the Labor Party, and that's a matter for the Labor Party in how they answer those questions publicly.

I know the Premier has made it very clear, and others on behalf of the government, that having the public express a view on what's best for them is something that - on behalf of our government - that we think is important-

**Mr BAYLEY** - But on the decision, on the allocation of funding-

**Mr BARNETT** - And leaving the people of Tasmania to make that decision is best for democracy, rather than people within a government department, where you have members of the public service expressing a view on what's best for the people -

**CHAIR** - You know that's not how that works.

**Mr BAYLEY** - Against criteria. Against specific criteria, and in a transparent and accountable way.

I'll ask again, do you think an internal Liberal Party process where decisions are made about community grants that are made by volunteers is a rigorous process? Is it a rigorous process?

**Mr BARNETT** - Well, I think you're mischaracterising- as I understand it, you're putting your slant on and characterising -

**Mr BAYLEY** - That's what we heard yesterday from the state director.

**Mr BARNETT** - You're characterising it from your words, and I wasn't here to listen to the evidence of the state director, because I was doing other things yesterday, including hosting a roundtable of business and industry leaders, which was a very productive and enjoyable meeting.

**CHAIR** - Come to answer the question, minister, because I am mindful that we're running out of time. Clearly, you're not able to say that it is a rigorous process.

It sounds to me, from your comments about decisions made by public servants - which isn't how grant funding rounds that are administered during periods of government - that is how grant funding rounds administered are administered during periods of government. We have criteria set, we have announcements and accessible access to those grant funding rounds. We have a process that happens within a department, to help weigh against criteria and help provide advice to deciding ministers about allocating those funds.

Are you casting aspersions on that regular way that we disperse public money during periods of government and suggesting that the way the Liberal Party make decisions about

disbursing and making promises to the electorate during election times is a more rigorous and more appropriate way to disburse public money than the way we normally do it via departments?

**Mr BARNETT** - Thank you for the question. The answer is no.

**CHAIR** - Thank you; I thought not. We need to be careful about casting aspersions on normal processes.

**Mr BARNETT** - Can I make it very clear that I reject wholeheartedly any aspersion accordingly.

**Ms JOHNSTON** - I'm interested in the ability of the commission to seek advice in relation to the interpretation and implementation of the acts within its purview. I'm particularly interested, and we've heard evidence, which I think is fair to summarise as some are frustrated and others are intrigued by various interpretations of the act and also in the absence of prosecution or testing of various aspects of the act. What's the relationship between the Solicitor-General, the DPP and the commission in terms of how the department facilitates that so that timely and accurate advice is provided to the commission to fulfil the functions of the commissioner?

**Mr BARNETT** - I think it's best if I refer that to the acting secretary, but certainly as a government we have access to that independent advice. You mentioned the Solicitor-General, Crown Solicitor, DPP, but I will refer that to the acting secretary.

**Ms BOURNE** - The commission and the commissioner have access to those very same avenues to seek advice. I understand that it's the commissioner's intention as they work through, particularly, the drafting of the guidelines to inform the operation of the funding and disclosure bill, that they will be seeking advice in relation to some aspects they feel they need to clarify to inform those guidelines.

**Ms JOHNSTON** - One clear example we've heard in evidence is the intriguing interpretation of 'advertisement' in regard to the Juice Media video content. Does the commissioner have the ability to access independent advice, so not from the Solicitor-General? Can they access private legal advice? Are there any restrictions to that? How is the timeliness of that advice ensured? Where there might be a breach, which might be quite significant and timely in terms of the impact of that breach, how is that accessed and provided?

**Ms BOURNE** - The normal Treasurer's Instructions around the seeking of advice would apply. Hypothetically, if the commissioner wished to seek external advice he would need to seek the approval of the Crown. I understand that even before the amendments coming into effect soon came into play, the commission had a good working relationship with the Office of the DPP in terms of referring potential breaches of the act to that office. I am not aware of any concerns around timeliness. I'm fairly certain that if the commissioner had a concern about timely advice, he would raise that with the agency and we'd be sure to work with them to overcome that, but it's not something I'm aware of at this point.

**Mr BARNETT** - I make clear that it's not something I'm aware of either.



## PUBLIC

**Ms JOHNSTON** - Regarding the prosecution threshold, is the DPP guided by the commissioner's view on whether there's enough evidence or is it the reverse and the DPP provides advice to the commissioner? Who instigates prosecution in those cases and who determines the threshold is met sufficiently to proceed with prosecution?

**Ms BOURNE** - Ordinarily, it would be advice from the DPP determining whether there's enough evidence to take a prosecution forward, but they're informed by the commissioner's view on what his interpretation is of the act, et cetera.

**CHAIR** - I'm mindful that we've come to the end of our allotted time. We thank you very much, Attorney-General, for appearing and having the hearing and discussion with us. We also appreciate the time of those who've supported you from the department. I don't know that I need to do the formalities of reminding everyone about parliamentary privilege as we leave the room; I think everyone's quite clear on responsibilities in that space.

**The witnesses withdrew.**

**The committee suspended from 4.33 p.m. to 4.38 p.m.**

**CHAIR** - Welcome, Eloise from the Australian Institute and Bill, who is online. Thank you for joining us at the Joint Standing Committee on Electoral Matters with our hearings for our first inquiry into the 2024 General House of Assembly elections and also periodic Legislative Council elections in 2024. We appreciate the time taken for your submission made and then appearing before us today.

To introduce you to the members of the committee who are present for the hearing, online we have Simon Wood, Liberal member for Bass; here in the room we have Cassy O'Connor, Greens member for Hobart; Kristie Johnston, Independent member for Clark; Vica Bayley, Greens member for Clark; Bec Thomas, Independent member for Elwick; and I'm Meg Webb, Independent member for Nelson.

I will start with some formalities and swearing in if that's okay. Before you begin to give your evidence, I'd like to ask whether you've received and read the guide sent to you by the committee secretary.

**Ms CARR** - Yes.

**CHAIR** - Great. I'm going to reiterate some important aspects of that document just to be clear here. This hearing is covered by parliamentary privilege, allowing individuals to speak with freedom and without fear of being sued or questioned in any court or place out of parliament. This protection is not accorded to you if statements that may be defamatory are repeated or referred to by you outside the parliamentary proceedings. This is a public hearing, members of the public and journalists may be present and this means your evidence may be reported. It's important that should you wish all or part of your evidence to be heard in private, you must make this request and give an explanation prior to giving the relevant evidence. Do you understand these?

**Ms CARR** - Yes.

**Mr BROWNE** - I do.

**Mr BILL BROWNE, DIRECTOR DEMOCRACY AND ACCOUNTABILITY PROGRAM, AUSTRALIA INSTITUTE TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED VIA WEBEX.**

**Ms ELOISE CARR, AUSTRALIA INSTITUTE TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.**

**CHAIR** - Thank you very much to you both. As I said, it's good to have you join us today. You've got an opportunity to make some opening remarks to the committee if you would like and then we will have some questions for you after that.

**Ms CARR** - Thank you for having us. We'd like to acknowledge that on a significant day for democracy globally, the establishment of this committee is a significant step forward for Tasmania's democracy. Congratulations. For all its faults, Australian democracy is a model for the world, with independently administered elections where voters can list their true preferences without throwing away their vote and compulsory voting that ensures that voices of the disadvantaged and disaffected can be heard.

In the lead-up to the 2024 Tasmanian elections, the institute hosted a public forum and a candidates roundtable discussion on integrity and politics. During these forums, we shared our research and invited feedback from participants. Participants also put forward their own ideas for fortifying Tasmania's democracy. Drawing on this, the institute published the democracy agenda for the 51st parliament ahead of the new parliament commencing. It provides 16 prioritised measures that would make Tasmanian elections more democratic, elected representatives more accountable, ensure public money is better spent and help parliament operate more smoothly and justly. One of its recommendations has already been adopted, the establishment of this committee.

Several of the recommendations relate specifically to improving the administration, operation and conduct of elections, including in relation to the 2024 elections. I won't go through all of the recommendations now, but I would like to briefly highlight three priorities that are consistently raised with us by Tasmanians as top priorities for electoral reform. They are greater donations disclosure, truth in political advertising laws and strengthening the Tasmanian Integrity Commission.

Firstly, on donations, our research recommends significantly lowering the threshold to \$1000 and guaranteeing closer to real-time disclosure the parties, candidates and associated entities, but not for third parties; broadening the definition of 'gift'; inquiring into bans on donations from particular industries; and ensuring public resource consistency and equity across both Chambers.

For third parties like charities, trade unions, businesses and business lobby groups, we've identified 3 problems in Tasmania's new donations disclosure law. There's a loophole that means donations received outside of the election period do not need to be disclosed. That loophole should be closed. The requirement that donations are disclosed on receipt is not feasible for third parties who will not necessarily know at the point of receipt what the purpose of a donation will be put to. Third parties should be required to disclose from the point of expenditure. Lastly, real time disclosure requirements are too onerous for most third parties for whom election campaigning is a very small aspect of their work.

The second priority is truth in political advertising laws. Tasmanians have waited long enough for these incredibly popular laws. Our research finds between 8 and 9 in 10 Tasmanians, that's 80% to 93% support these laws across all voting intentions. South Australia's proven model could be adopted here just as it was, with unanimous support by Labor, Liberal and the Greens parliamentarians in the Australian Capital Territory. Here, Labor announced their support for these laws in 2021.

During the recent inquiry into the Greens Bill on donations disclosure, the Electoral Commissioner raised some concerns about administering proposed truth in political advertising provisions. South Australia raised similar concerns when they were adopting their laws, but have subsequently changed their position.

It's fine for the Electoral Commissioner to raise concerns, but ultimately, it's Parliament's job to decide how and who is best placed to administer laws. Truth in political advertising provisions should clearly allow for the court to be the ultimate arbitrator if required. The South Australian model gives the Commissioner the power to request only and leaves it to the courts to compel and add to be retracted. This is an important limitation of executive power that should be included in such provisions.

This also relates to the Electoral Amendment Bill 2024 that has been recently referred to this committee. We agree with the Legislative Council's debate last year that it makes sense to pair the scrapping of Section 196 of the *Electoral Act* with the introduction of truth in political advertising laws to protect candidates from untrue material being published about them.

The third priority is strengthening the Integrity Commission. The Institute's perspective on priorities for the Commission have evolved since the visit to Tasmania by the former Victorian IBAC Commissioner, the Honourable Robert Redlich AM KC, who identified 5 priorities for the Commission.

Robert described the Integrity Commission's budget of around \$3.5 million per annum as a farce. However, despite widespread calls for a significant increase, this year's budget had a measly addition of \$67,000, along with a significant increase in their workload. The top priority for the commission has to be at least a doubling of its annual budget, as Chief Commissioner Melick is calling for. Otherwise, it looks like the government is deliberately underfunding the Commission so it can't do its job properly.

The second priority is to remove the right to privilege against self-incrimination. The *Integrity Commission Act* has what Robert Redlich describes as a fundamental flaw. It allows a person to refuse to answer questions in an inquiry on the grounds they may incriminate themselves. This can be used to avoid being compelled to provide evidence. Legislation that allows hearings to be conducted without privilege against self-incrimination is crucial to effectively uncovering misconduct. Royal Commissions and other Australian integrity bodies remove this privilege.

This means that any evidence or admissions made during a hearing are not admissible in a court of law. Uncovering misconduct is the top priority and if a criminal offence is uncovered, there must be a separate prosecution. The *Integrity Commission Act* should be amended to remove this privilege to avoid self incrimination so that public hearings can be conducted in an efficient constructive manner that exposes misconduct. For an integrity body to serve its

purpose, it must be able to expose public office misconduct wherever and whenever it occurs. The way in which the act currently supports the commission to operate does not achieve this.

The third priority, the honourable Robert Redlich described public hearings and publication of reports as vital and said their absence creates significant transparency and public trust issues. The commission has never held a public hearing in its 14 years of operation, despite having the power to do so. Common reasons cited by the commission include unreasonable damage to reputation, budgetary constraints and the investigation not meeting the public interest test.

Firstly, other jurisdictions avoid unreasonable damage to reputations by making it clear at the outset whether a person is under suspicion. Secondly, the difference in cost between holding public and private hearings is minimal. Thirdly, if misconduct has occurred, then it is in the public interest to bring attention to it. The National Integrity Committee recommends the ability to hold open public hearings at the discretion of the Chief Commissioner without any trigger or threshold.

The fourth concern is that the commission's jurisdiction is constrained by its inability to investigate third parties and if you are wondering how all this relates to the review of the election, third parties include those that are intrinsically linked with the political process such as political parties or lobbyists. Furthermore, the commission is unable to investigate elected representatives, including ministers and the Premier, during an election period when a parliament is prorogued.

The commission's jurisdiction must be expanded to enable the investigation of any person that adversely effects, or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration. Without this ability, it's difficult to see how the New South Wales cases of Eddie Obeid and Ian Macdonald would ever have been uncovered.

The final reform recommended by Robert Redlich is to limit the terms for commissioners to a single term to minimise incentives to avoid investigations. As is the case in other jurisdictions, many members of the 51st parliament campaigned on commitments to strengthen integrity in politics should they be elected. Thus, this inquiry into the conduct of the 2024 elections provides an excellent opportunity to achieve progress towards this, as well as to enhance public trust and confidence in parliament, government and its institutions.

**CHAIR** - And is Bill going to make an opening comment as well or just take questions?

**Mr BROWNE** - That counts for me as well, that statement. Thank you.

**Ms JOHNSTON** - Thank you for your detailed submission and I will probably start with - you finished off for the Integrity Commission. I think it's fair to say, and I completely agree with you, that's a major concern for Tasmanians in terms of our democracy in our parliamentary processes and a strong Integrity Commission is critical to give confidence to the community and both of those.

The Integrity Commission inserted itself into the 2024 election quite clearly when it started making public commentary regarding the campaign and candidates commentary around what is investigating. You recall that the Integrity Commission has two investigations underway and two elected members and this became a quite a topic of interest to voters entering

the campaign and to candidates as well in terms of who those individuals might be in the inability of the commission to conclude its investigations, but also to outline who those particular individuals are that are being investigated. It drew a lot of commentary around whether the public had a right to know.

Can you perhaps elaborate on the silence around that? The Integrity Commission's conduct during the election campaign in terms of its writing to candidates talking about that matter may have influenced the vote for the 2024 election?

**Ms CARR** - I think that goes to two of the points that I just mentioned. One is why is it taking so long? Arguably, that's just because of the terrible level of funding, which is completely handicapping the Integrity Commission's ability to do its job, but also the lack of willingness to hold open public hearings. Yes, that's a great example of two of the really key issues.

**Ms JOHNSTON** - Is the institute concerned then that voters in the 2024 election went to an election campaign unaware that two members of parliament, which two members of parliament are under investigation for serious matters that the Integrity Commission looks, of issues of corruption, misconduct - those kind of matters that are fundamental to the integrity of a member of parliament. Is it a concern to institute that members of the public didn't know who those members were?

**Ms CARR** - Clearly, there should be adequate funding so that the commission can do its job in a more timely manner.

**Ms JOHNSTON** - Further to that, the commission gave evidence during Estimates to both the Legislative Council and House of Assembly Estimates process that one of the restrictions or barriers it's finding with progressing those two investigations is both resources in terms of funding, but also legal challenges. Do you have commentary to make about that regarding the appropriateness of those legal challenges and the robustness of the *Integrity Commission Act* to deal with legal challenges of members of parliament?

**Ms CARR** - I don't. I'm not aware of the details of those challenges, sorry.

**Ms JOHNSTON** - Neither are we, I think that's the point.

**Mr BAYLEY** - On the issue of doubling the budget, most people at this table will concur with that. There is also the expanding of the legislative scope of the commission. In that doubling the budget, are there more functions within the current legislation that it could do if it had the funding or is it simply about boosting its existing capacity to do it better and quicker? I know we need to boost funding, we need to expand its scope and powers and so forth. That will require its own resourcing. But in doubling the funding here and now, do you have a read on where that should be directed?

**Ms CARR** - First of all, the chief commissioner is calling for at least a doubling. That's why I'm referring to that figure. One of the reasons for not holding more public hearings and not publishing more reports is funding. That would relate to its existing powers. It's also been tasked with additional responsibilities since the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

**Mr BAYLEY** - The Weiss review, I would say.

**Ms CARR** - Yes, and the Weiss Review. It's been given additional responsibility with only a very measly increase in its annual budget. It relates to both being able to do the work that it currently has responsibility for. Basically, it needs more money to be able to do its existing job.

**Mr BAYLEY** - If we get to the place where we've expanded its powers and its functions, it would need significantly more again to perform those adequately, depending on the level of referrals and action that it needs to take.

**Ms CARR** - Yes. If you look at other jurisdictions, the Tasmanian Integrity Commission has quite broad jurisdictions, for example over the police, that some other jurisdictions don't, yet it has comparatively less resourcing.

**Ms O'CONNOR** - I feel like I should slightly defend the Integrity Commission, because my understanding is that during the election campaign there was so much speculation about who might be subject to an investigation that I feel like the chief commissioner felt he needed to write to participants in the election, but I wasn't one of them. I'm not sure about that, but I feel like it's something that the Integrity Commission, the chief commissioner, would very rarely do is to insert themselves.

To be clear, what you're arguing here for is not just a substantial increase in funding. It's an overhaul of the act too, isn't it? We've got all the Cox review recommendations from 2016 and those other massive bodies of work that have led to a higher level of responsibility on the commission. Are you satisfied that if the funding was increased to the extent that the chief commissioner has said is the minimum necessary to do the job properly and those powers were given to the Integrity Commission in the act, including removing the right to silence in section 72, that it would be the Integrity Commission that parliament hoped it would be in 2009 and which the Tasmanian people would expect it can be?

**Ms CARR** - Let's be clear, there was the 2016 independent Cox review where only six of 55 recommendations have been implemented, so we need to finish that job. There was also the 2022 review that the then Attorney-General started, which included a significant consultation process. We've never seen the outcome from that review. We don't know what people's submissions were, we've never had a government response to that review, so I think we should finish that review. We know what we need to do. We don't need another review. We know -

**Ms O'CONNOR** - We've got one, though.

**Ms CARR** - I'm not sure where it's up to. The last thing I heard, there wasn't any terms of reference or anything yet.

**Ms O'CONNOR** - There's no terms of reference that we know of.

**CHAIR** - For people who might be listening, this is a review that was committed to under arrangement with the then Jacqui Lambie members, now independents, and the Premier as part of an arrangement that's due by April next year.

**Ms CARR** - Have I missed the terms of reference coming out?

**Ms O'CONNOR** - No. We're all waiting, including the Integrity Commission, I might say, who hasn't been consulted or seen those terms of reference.

**Ms CARR** - Obviously, we don't know what the outcome from the 2022 review is, but we know what the problems are and we know what we need to do to fix it from the Cox review, and from our research and others' research, and what the commission itself is asking for. The promise that Elise Archer made was to produce draft legislation. That was the next step, to introduce, to fix the commission act and we haven't seen that yet.

**Ms O'CONNOR** - As an interested participant and observer, can you understand why Tasmanians might form the view that the underfunding and the failure to amend the act are deliberate on the part of government? Because the stronger your integrity commission is, the hotter the blowtorch it can apply is.

**Ms CARR** - Yes. We did research in 2021 that found roughly one in two Tasmanians didn't think the commission was capable of doing its job. That's in our written submission.

**Ms O'CONNOR** - But the question is, do you think that's by design? I guess that's something you can only speculate on, but after all there's time.

**Ms CARR** - Well, the funding is a choice, the funding is a priority choice by the government and they are clearly choosing not to adequately fund the Integrity Commission, thereby hampering its ability to do its job.

**Ms O'CONNOR** - They can afford a chocolate fountain, though.

**Ms JOHNSTON** - A stadium.

**CHAIR** - In relation to the Integrity Commission and any kind of updating or reforming we do of it, one of the things you've highlighted in your submission is potentially expanding its purview to cover members of parliament during an election. I think that's of particular relevance for us to contemplate in this inquiry in terms of the conduct of elections. Is that a situation that is dealt with by other jurisdictions adequately where, say, their integrity entities do have the ability to investigate complaints made about members of parliament or, potentially, during caretaker periods, ministers who are still in ministerial roles to some extent during that time? Can that be done in other jurisdictions? And is it something we can look to and emulate here?

**Ms CARR** - I'll bring Bill in, but I'm pretty sure that Tasmania is a unique situation with having that, what is essentially a loophole. Bill, am I right?

**Mr BROWNE** - Yes. I'm not aware of any other jurisdiction that carves people out during the election period or anything that even approaches it. With the NACC (National Anti-Corruption Commission) legislation, when it was proposed, there was a concern that there was a kind of - or in fact, I think this is the Commonwealth Integrity Commission proposed by the Morrison government before the NACC model - a concern that the work of ministers may have fallen outside of the scope. And that was one of the key criticisms of the Morrison-Porter model that was proposed.

In fact, integrity commissions across Australia, and certainly the ones we consider the strongest, have a broad ambit to consider the conduct not just of public officials and with a broad enough definition of 'public official' to cover kind of corner cases like during the election period and the dissolution of parliament, but also those trying to influence the behaviour, the conduct of public officials. It would be normal to be much broader than this, and I think Tasmania's case is unprecedentedly narrow.

**CHAIR** - Can I clarify that a bit further, so we do understand: during an election campaign period, members of parliament don't have their seats any more, they no longer hold their seats, they're not a member of parliament. A minister still retains some, certainly more limited, but some responsibilities for their portfolio area with caretaker conventions wrapped around that. But the people who had been members of parliament in the period of government that's just come to an end with that election period and who may be running to seek election again, during that election campaign they are not technically a member of parliament here. Would they still be regarded as public officers in other jurisdictions and, therefore, captured by the purview of the integrity entity that's there, or are they not?

**Ms O'CONNOR** - Perhaps if they're elected?

**CHAIR** - We're talking about things that arise as a complaint, for example, about behaviour or misconduct, or the like undertaken during the election period by people who are running for election who were members of parliament in the previous parliamentary period and who are seeking to be members of parliament again, but in that little window aren't technically members of parliament. I wonder whether they would technically be considered public officers?

**Mr BROWNE** - I'm pretty sure the legislation in other jurisdictions does account for that, but I'm not sure how it does. If I can take on notice, I can kind of go through the legislation.

**CHAIR** - That would be great to understand that more if that is something you can provide more information about.

**Ms CARR** - To be clear, we're actually recommending that the legislation be broadened to allow third parties to be investigated, so this becomes a bit of a moot point. And that might be how other jurisdictions deal with this. I'm not sure. But the point is that we should be able to investigate people who are seeking to corruptly influence public officers, not just public officers.

**Ms JOHNSTON** - That would include lobbyists, other campaigners, but also potentially other candidates who've never been a member of parliament but who may, after the election, be a member of parliament.

**Ms CARR** - Or political parties, who are intrinsically linked to the process. They can't even be.

**CHAIR** - Seeking to influence is different from actually being the one engaging in what might be deemed misconduct and needing to be investigated. So it's an interesting curly area. Any further thoughts or reflections to provide to us down the track would be appreciated.



**Ms THOMAS** - I want to ask some questions further to your comments about the truth in political advertising laws. I know the detail you've provided in the submission talks about the ACT and South Australia laws. From the Australian Institute's perspective, is there an off-the-shelf product ready to go here that that would not take a lot of implementation?

**Ms CARR** - Absolutely. We point to the South Australian model, which is essentially what's been adopted by the ACT. Yes.

**Mr BROWNE** - To elaborate on that, we've seen reform efforts in other jurisdictions, although they've not yet resulted in legislation, also picking up the kind of form and structure of the South Australian legislation. So, New South Wales, Victoria and at the federal level, all have considered the South Australian model as kind of the pick-up, plug-in system that you can use. Some jurisdictions have tried to take advantage of existing case law by adapting the kind of phrasing 'misleading or deceptive conduct', for example, borrows from consumer law. So there are variations you can make. But the system could remain very similar to that in place in South Australia.

**Ms THOMAS** - We've had some discussion previously about the recent debate around the proposed amendment to section 196 of the current *Electoral Act*. From your perspective, would truth in political advertising laws provide a mechanism to address the concerns that are raised by removing or amending that particular section? And if so, can you provide a bit more detail on how?

**Ms CARR** - Yes, as I mentioned in my opening statement, we think it makes sense to pair the removal of section 196 with the introduction of truth in political advertising laws. That would protect candidates from material that would be misleading or deceptive being published about them during an election campaign. Did you want to add anything to that, Bill?

**Mr BROWNE** - We see examples in South Australia of that taking place. So, while the majority of findings that I'm aware of have not been in relation to claims made about a particular person, there are some examples where that's been the case. Again, I can furnish those on notice, but even the first adverse finding under the South Australian system involved misquoting an opposition spokesperson and attributing things to them that they'd never said. We have these working examples of how truth in political advertising laws can provide redress for someone who's been accused of something in advertising that they haven't done.

**Mr BAYLEY** - This is slightly outside the terms of reference here, but it's in your submission. I'm interested in the notion of publishing the briefs to new ministers and also the notion of a trial of the proactive disclosure of Cabinet documents, noting of course that Cabinet documents are seen as sacrosanct by Cabinet and governments.

**Ms CARR** - Not in New Zealand.

**Mr BAYLEY** - Can you talk us through that proposition and other jurisdictions that do this and how a trial would work in your mind?

**Ms CARR** - We were pointing to the New Zealand example in reference to both of those. It's not all Cabinet documents, as I understand it, in New Zealand, it's some. With the incoming ministerial briefs, in New Zealand they're seen as an educative tool for the public, but also for other parliamentarians so that they can understand where issues are up to at a given time. I

guess you could trial that with a specific time limit, but our submission hasn't gone into specifics to that extent. I could get back to you with some more information about that.

**Mr BAYLEY** - That'd be interesting. I would be interested in that and mechanisms to make that happen.

**Mr BROWNE** - In particular, the concern arises from the misuse of Cabinet confidentiality to withhold documents that would otherwise become available through other mechanisms. Freedom of information laws are a classic example where the penumbra of Cabinet extends so far as to documents that were prepared by people who had no knowledge that document was going to go to Cabinet. If you think about the reasons advanced for Cabinet confidentiality, they cannot apply to people who are preparing documents for the general use of government that happen to appear in Cabinet.

**Mr BAYLEY** - Yes, that's an interesting distinction.

**Ms JOHNSTON** - I think you were here for the last section of the Attorney-General's evidence to us today in which we had a robust discussion around indirect election bribery or pork-barrelling. I note that you've made reference to that in your submission. Would you like to elaborate on what you think would be the appropriate guide to making commitments around election time and the right scrutiny of merit-based allocation of public funds, particularly around elections?

**Ms CARR** - This is the third consecutive election in which the Tasmanian Liberals have been accused of electoral bribery. In our submission, we point to the Integrity Commission's recommendations, of which there are three around funding commitments during election campaigns. They recommend introducing legislation for Tasmania that incorporates sentiments from the Commonwealth legislation that a minister must not approve proposed expenditure of relevant money unless it's satisfied that the expenditure would be a proper use of public money. They also recommend introducing mandatory grant rules, which would be modelled on Commonwealth grant rules and guidelines. These should include compliance mechanisms. The third recommendation from the Integrity Commission is around adopting the remainder of recommendations from back in 2011 from the Auditor-General about the Premier's Sundry Grants Program, also known as the Premier's discretionary fund.

**Ms JOHNSTON** - Do you think the fact that we haven't progressed those recommendations from the Integrity Commission and Auditor-General has had a significant impact, let's say, on the 2024 election, which we are most interested in, in terms of influencing, particularly in small communities where funding is tight for any kind of government funding, where it is done directly to impact or influence votes? Do you think that has had a significant impact?

**Ms CARR** - Well, that is one of the ongoing investigations by the Integrity Commission, isn't it, in relation to one of these, if I remember correctly?

**Ms JOHNSTON** - Well, we might never know, that's part of the problem. We suspect, but we don't know.

**CHAIR** - We have come to the end of our time. In a formal way, I remind you both that, as advised at the commencement of the evidence, what you have said to us here today is

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protected by parliamentary privilege. Once you leave the table, you need to be aware that privilege does not attach to the comments you make may make to anyone, including the media, even if you are just repeating what you have said to us here. Do you understand this?

**WITNESSES - Yes.**

**CHAIR -** Thank you for the submission and thank you for the time today, we appreciate it.

**THE WITNESSES WITHDREW.**

**The public hearing concluded at 5.14 p.m.**