

COMMUNITY LEGAL CENTRES TASMANIA

15 April 2019

Department of Justice
Strategic Legislation and Policy
GPO Box 825
Hobart TAS 7001

via email: haveyoursay@justice.tas.gov.au

To the Department of Justice,
Re: Electoral Act Review Interim Report

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Electoral Act Review Interim Report* ('the Interim Report').

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We support many of the proposals raised in the Interim Report but our response is limited to sections 2 and 3 which relate to disclosure and electoral expenditure and the regulation of third parties.

Disclosure and Electoral Expenditure

Political parties registered with the Australian Electoral Commission are required to comply with the *Commonwealth Electoral Act 1918* (Cth) which mandates that all political donations over a threshold of \$13,800 must be disclosed annually. As well, every other Australian jurisdiction except Tasmania has a disclosure framework for candidates and political parties in addition to the Commonwealth Act. In other words, Tasmania is the only jurisdiction in Australia without a campaign disclosure framework.

The reliance on the *Commonwealth Electoral Act 1918* (Tas) for our disclosure laws means that there is a lack of transparency with political donations able to be

concealed from the public for up to 19 months;¹ and more than 80 per cent of all donations made to political parties between 2009-2015 not being disclosed.²

With Tasmania also failing to provide electoral funding of candidates and political parties, the legitimacy of the electoral process is dependent on the public being able to identify, in a timely fashion, the source of political donations.

We therefore strongly recommend the introduction of best practice disclosure laws in Tasmania. These laws would include:

- A disclosure threshold of \$1,000 to be calculated cumulatively for both individuals and organisations; and
- Disclosure of donations over \$1,000 in 'real-time' to political parties, candidates and associated entities; and
- A donation cap of \$3,000 per donor per parliamentary term.

We also recommend public funding of elections as is the case in every other jurisdiction except the Northern Territory. We believe that public funding should be provided where a candidate receives more than 4 per cent of first preference votes which is the position of every jurisdiction except Queensland. We also believe that the 4 per cent public funding threshold should apply to candidates running for election in both the House of Assembly and Legislative Council. Finally, we believe that the expenditure of public funds should be restricted to actual expenditure rather than votes received. Capping public funding to funds expended will act as a safeguard against high-profile candidates who may not want to get elected but see an opportunity to make a profit.

Regulation of Third Parties

A transparent donation process cannot be limited to political donations but must also include third parties including third party campaigners, associated entities and donors. We therefore strongly support the adoption of a disclosure and registration regime for third parties.

A useful model that should be considered is New South Wales where third parties must register prior to making electoral expenditure during an election. The advantages of registration include the ability of the Tasmanian Electoral Commission to regulate and provides a level of transparency with the public aware of the third parties actively campaigning.

We also support the capping of electoral expenditure by third parties. In the recent decision of *Unions NSW v New South Wales*³ the High Court held that a NSW law which capped electoral spending by third party campaigners at \$500,000 impinged on the

¹ This is because the *Commonwealth Electoral Act 1918* (Tas) only mandates annual disclosure each financial year, and which must be released by the February of the following year.

² According to the Institute for the Study of Social Change between 2009 and 2015 only 16.4 per cent of all donations made to Tasmanian political parties was disclosed. As found at Richard Eccleston and Nicholas Gribble, *Submission to the review of the Tasmanian Electoral Act 2004* (Institute for the Study of Social Change, University of Tasmania) July 2018 at 2.

³ [2019] HCA 1.

implied freedom of political communication. Nevertheless, the majority found that Parliament could legislate to cap expenditure by third party campaigners but that the onus was on the Government to demonstrate that the amount was set at a level reasonably necessary to achieve a legitimate purpose:⁴

It must of course be accepted that Parliament does not generally need to provide evidence to prove the basis for legislation which it enacts. However, its position in respect of legislation which burdens the implied freedom is otherwise. *Lange* requires that any effective burden be justified. As the Commonwealth conceded in argument, the Parliament may have choices but they have to be justifiable choices where the implied freedom is concerned.

Whilst we support the capping of electoral expenditure by third parties we do not have a firm view on where the cap should be set. One option to progress this issue could be the establishment of a government inquiry which would be tasked with determining the appropriate cap. A government inquiry would also have the advantage of potentially providing the justification which the High Court noted above.

Prohibited Donations

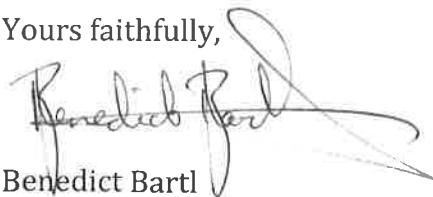
Finally, we strongly believe that Tasmania should adopt similar legislation to NSW where donations to political parties from property developers, tobacco businesses, liquor and gambling businesses or their close associates are banned. We also support the prohibition of donations from foreign interests as was recently enacted in the *Commonwealth Electoral Act 1918*.

Summary

In summary, we strongly support the introduction of a best practice campaign disclosure framework. The adoption of best practice will ensure the legitimacy and integrity of our electoral processes and strengthen our democratic institutions.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

⁴ *Unions NSW v New South Wales* [2019] HCA 1 per Kiefel CJ, Bell and Keane JJ at para. [44].

