

# Electoral Act Review Interim Report

## Tasmanian Greens Submission

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Department of Justice

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### Foreword

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I write on behalf of the Tasmanian Greens to present our response to the Interim Report of the Electoral Act review. This feedback follows our initial formal submission to the Review, dated 10 July 2018.

We reiterate our concern that this review process is flawed and drawn out with the apparent purpose of delaying vital reform that would strengthen Tasmania's democracy.

It is also of enduring concern that the Minister overseeing this review process is conflicted as Ms Archer was the recipient of tangible financial support from the gambling industry prior to, and during, the March 2018 State Election.

Given the support Minister Archer received from gambling interests and her advocacy on the industry's behalf, the Greens argue she has a manifest conflict of interest administering this reform impartially and effectively in the best interests of Tasmania's democracy.

This ethical conflict created by the acceptance of large sums of money from vested interests permeates the entire review process and underpins the obvious resistance to reform that is manifest in the Interim Report.

The most recent Australian Electoral Commission (AEC) returns strongly reinforce the need for substantially greater transparency on electoral donations, with more than \$3million donated to the Tasmanian Liberal Party for the 2018 election from undisclosed sources.

This had, and continues to have, a corrupting effect on Tasmania's democracy.



Our submission will focus on interim report consultation issues 13 through to 19.

The obvious bias presented in the more important aspects of this review is disappointing but regrettably unsurprising. For many of the consultation issues, the phrasing is neutral, such as *"whether this should happen"*.

Yet for the key problems currently facing Tasmania - namely consultation issues 15, 18, and 19 - the review has phrased the issues as *"whether this should be considered at a later stage"*. This points to clear Ministerial interference in the review process to delay or prevent significant reform.

Consultation Issue 19 has gone one step further and is in fact the only consultation issue that has been posed as a statement rather than a question. Despite overwhelming evidence that placing restrictions on the sources of donations is needed as is the case to varying degrees in Queensland, NSW and Victoria, the Interim Report states, *"That a prohibition on donations from certain parties not be considered in Tasmania at this stage."*

The Liberal Party has the most to benefit from inaction on these issues, as the largest recipient of large donations. Public opinion is strongly in favour of caps on donations and expenditure. It therefore appears that the Liberals in government have exerted influence to corrupt this review in order to attempt to put off discussion of these issues and reforms strongly supported by the voting public.

It is galling how thinly justified this delaying tactic is in the Interim Report.

### **Consultation Issue 13**

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**The Tasmanian Greens support the Senate Select Committee into the Political Influence of Donations Recommendations 3 and 5 for fixed disclosure threshold of \$1,000, to be calculated cumulatively over a whole party group and online, continuous real-time disclosure to the Australian Electoral Commission of donations to political parties, candidates and associated entities.**

### **Consultation Issue 14**

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Some of the information canvassed in the Interim Report is factually incorrect. Western Australia's per vote funding is currently \$1.889, not \$1.68 and the ACT's per vote funding is

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\$8.24 not \$8.00. Further to this, the Australian per vote cost of \$2.68 was the 2017 rate; the current rate is \$2.75.

It is also incorrect to assert that the Australian rate is “fairly average” across jurisdictions. This is lowest rate bar Western Australia. By the Greens’ calculations, the rates are \$2.75 Federally; \$8.24 in the ACT; \$4 in NSW (for the lower house); \$6 in Victoria (rate applies for the next State election in 2022); \$3.14 in Queensland (for the lower house); \$1.889 in Western Australia (2017/18 Financial year); \$3.00 for South Australia (Standard rate, scheme varies). The average of all of these rates is \$4.15 per primary vote, which we believe is a more suitable number while still being relatively inexpensive.

This also appears to a relatively low coverage rate compared to the rest of Australia. We have comprised an estimate of electoral expenditure for each of the last State/Federal elections and have estimated the rate of coverage for party expenditure. Under last year’s expenditure a return of \$4.15 per primary vote would have been an estimated coverage rate of 27% (see Tas scenario 1), roughly half the average rate of 52% and equal second last with South Australia. As such, we believe the rate of \$4.15 is relatively modest under current rules.

Scenario 3 examines an appropriate funding level to achieve a 52% coverage rate under last election’s expenditure in the event of a \$810,000 cap and scenario 4 examines the same scenario while also excluding donations in excess of our proposed \$3,000 cap (as far as can be determined with the information available under the current regime). The per vote funding under scenario 3 and 4 to achieve a 52% coverage rate is \$2.95 and \$2.70 respectively. As such, tying our per vote funding to the Federal funding arrangements would appear to be appropriate if recommendations for expenditure and donation caps are adopted as they should be.

Jurisdiction	Labor	Greens	Liberals	Total	Voters	Funding	Total Cost	Coverage
Australia	\$34,989,019	\$2,602,944	\$39,474,739	\$77,066,702	16,222,336	\$2.75	\$44,611,424	58%
ACT	\$1,293,101	\$535,944	\$1,790,105	\$3,619,150	291,786	\$8.24	\$2,404,317	66%
NSW	\$11,734,833	\$3,333,416	\$17,949,681	\$33,017,930	5,220,445	\$4	\$20,881,780	63%
VIC	\$6,616,436	\$2,882,918	\$11,442,218	\$20,941,572	4,147,450	\$6	\$24,884,700	100%
QLD	\$15,908,937	\$1,581,379	\$9,731,090	\$27,221,406	3,222,932	\$3.14	\$10,120,006	37%
WA	\$9,816,907	\$1,943,644	\$12,610,057	\$24,370,608	1,621,690	\$1.889	\$3,063,372	13%
SA	\$4,914,699	\$472,998	\$7,957,593	\$13,345,290	1,197,589	\$3.00	\$3,592,767	27%
<b>Average</b>						<b>\$4.15</b>		<b>52%</b>
TAS scenario 1	\$928,050	\$547,059	\$4,322,681	\$5,797,790	381,521	\$4.15	\$1,583,312	27%
TAS scenario 2	\$810,000	\$547,059	\$810,000	\$2,167,059	381,521	\$4.15	\$1,583,312	73%
TAS scenario 3	\$810,000	\$547,059	\$810,000	\$2,167,059	381,521	\$2.95	\$1,126,871	52%
TAS scenario 4	\$690,722	\$479,559	\$810,000	\$1,980,281	381,522	\$2.70	\$1,029,746	52%

**The Tasmanian Greens support public funding of election campaigns. Under current rules we would recommend the Australian average rate of \$4.15 per first preference vote in 2018/19, indexed at an appropriate rate each financial year.**

### **Consultation Issue 15**

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The Interim Report argues that various practical implications would need to be explored before caps could be recommended. Integral to a sincere review process would be the exploration of these “practical implications”, rather than suggesting not dealing with this issue.

Fortunately, extensive consultation was undertaken during the development of the *Electoral Amendment (Electoral Expenditure and Political Donations) Bill 2013*. The Bill had significant public support, passed the House of Assembly - and fortunately for this review - addressed many of the issues the Interim Report raises.

The Bill inserted the following within the definition of expenditure period -

*“(c) in the case of an Assembly election –*

*(i) if the election is held within 12 months of the commencement of section 4 of the Electoral Amendment (Electoral Expenditure and Political Donations) Act 2013, the period commencing on the commencement of that Act and ending on the day on which the election is held; or*

*(ii) if the election is held at any other time, the period of 12 months ending on the day on which the election is held;”*

This is the only matter outlined by the Interim Report which is relevant to the House of Assembly specifically. Expenditure caps exist for Local Government and Legislative Council elections, where none of the other issues have proven to have created any problems requiring urgent attention.

Refinements such as reviewing the current definition of ‘election expenditure’ could prove to be useful exercises; however, given that an existing definition is already applied to Legislative Council elections we can be confident that serious negatives are unlikely.

It is disappointing that the review process through the Interim Report has attempted to throw up barriers, rather than seek feedback on how these potential issues could be addressed. Again, this points to a review process that has been corrupted from the outset by the very matters it should be addressing to strengthen electoral law in Tasmania.

**The Tasmanian Greens support a cap of \$81,000 for individual candidate expenditure and \$810,000 for party expenditure in House of Assembly elections for the 2018/19 financial year, increasing by \$1,000 and \$10,000 per year respectively.**



## Consultation Issues 16 and 17

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**The Tasmanian Greens support corresponding regulation of the political activities of third parties and associated entities, including the same or similar rules regarding disclosure of expenditure and donations that apply to political parties. We agree that the requirement to register with the Tasmanian Electoral Commission and the adoption of a broad definition of electoral activity and a definition of political campaigners would be beneficial for such a scheme.**

## Consultation Issue 18

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This is a very brief discussion reliant on unargued assumptions. The report states;

*“Caps may be more acceptable to political parties and candidates where there is public funding of electoral activity.”*

The acceptability of donations regimes to candidates and parties is irrelevant. It is the acceptability to the general public that matters. Tasmania is, after all, a democracy. Yet the report makes no mention of public expectations. Again, this is evidence of a review process that has been designed to favour political parties that are the beneficiaries of Tasmania’s weak donations’ disclosure and electoral transparency framework.

The Interim Report also - predictably given its bias - says we need more evidence before acting. We certainly do not. It is the principle that vested interests should not be able to buy government or buy government policy that guides donation caps. Donations occur at a threshold and with a secrecy that is unacceptable to the community. How frequently these sorts of donations occur is irrelevant.

The question here should have been *“what should the donations cap be?”* It is an absolute disgrace and an insult to the Tasmanian electorate that the review has been forced by political considerations to take the approach that it has.

**The Tasmanian Greens support the Senate Select Committee into the Political Influence of Donations Recommendation 7 that a donation cap be set of \$3,000 aggregate per donor, per Parliamentary term.**



## Consultation Issue 19

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It is interesting that the Interim Report would use a failed High Court challenge, as well as a challenge that resulted in a minor legislative amendment, to rationalise the position that donations from certain parties not be banned. This is the proverbial 'clutching at straws' to prop up a weak position.

The Interim Report attempts to argue that the absence of an independent finding of a specific instance of corruption would indicate that there is no evidence of a problem. This misses the point entirely. One of the principle concerns is what former Liberal Treasurer, Michael Yabsley, described as "soft corruption".

Other issues include Ministers and Cabinet being fully aware of the implications a decision may have on ongoing significant revenue streams. While this is not overtly discussed, and may not overtly factor into decision making, it is still very likely to have some sort of impact on decision making.

These issues are widely understood within the community and are a matter of common sense. Political parties committed to integrity and transparency understand this.

The combined efforts of the Tasmanian Hospitality Association and Federal Group during the 2018 State Election is just one recent example of the excessive influence certain industry sectors can wield when they are not subject to spending restrictions.

In terms of the lack of a verified independent finding of corruption, we note the High Court ruling in *McCloy v New South Wales* considered it a legitimate end to reduce the risk or perception of undue influence and corruption. The standard of risk or perception does not require a concrete case to have been identified by an independent body.

The report makes no effort to mount an argument against banning foreign donations, yet still recommends against this despite the fact the Federal Parliament has voted to ban donations from foreign interests. This failure can be seen in the light of the Tasmanian Liberal Party's willingness to accept donations from a company and individual with demonstrated ties to a foreign government, despite ASIO's warning to the major parties.

**The Tasmanian Greens support banning donations from corporate donors. At a minimum, donations from property developers, tobacco, liquor and gaming industries should be prohibited as they are in a number of Australian jurisdictions. The Tasmanian Greens also support a ban on donations from foreign interests.**



## Recommendations

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- **The Tasmanian Greens support the Senate Select Committee into the Political Influence of Donations Recommendations 3 and 5 for fixed disclosure threshold of \$1,000, to be calculated cumulatively over a whole party group and online, continuous real-time disclosure to the Australian Electoral Commission of donations to political parties, candidates and associated entities.**
- **The Tasmanian Greens support public funding of election campaigns. In the event that recommendations for expenditure and donation caps are adopted, consideration should be given to tying Tasmania's per vote payment rate to the Federal election rate to be appropriate. However, under current rules we would recommend the Australian average rate of \$4.15 per first preference vote in 2018/19, indexed at an appropriate rate each financial year.**
- **The Tasmanian Greens support a cap of \$81,000 for individual candidate expenditure and \$810,000 for party expenditure in House of Assembly elections for the 2018/19 financial year, increasing by \$1,000 and \$10,000 per year respectively.**
- **The Tasmanian Greens support corresponding regulation of the political activities of third parties and associated entities, including the same or similar rules regarding disclosure of expenditure and donations that apply to political parties. We agree that the requirement to register with the Tasmanian Electoral Commission and the adoption of a broad definition of electoral activity and a definition of political campaigners would be beneficial for such a scheme.**
- **The Tasmanian Greens support the Senate Select Committee into the Political Influence of Donations Recommendation 7 that a donation cap be set of \$3,000 aggregate per donor, per Parliamentary term.**
- **The Tasmanian Greens support banning donations from corporate donors. At a minimum donations from property developers, tobacco, liquor and gaming industries be banned.**
- **The Tasmanian Greens also support a State-based prohibition on donations from foreign interests.**

Thank you for taking the time to consider this submission.



**Cassy O'Connor MP**  
Tasmanian Greens Leader

On behalf of the Tasmanian Greens



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